

City v. DC37, et. Al,30 OCB 32 (BOC 1982) [32-82 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Application

-between-

THE CITY OF NEW YORK,

Petitioner,

DECISION NO. 32-82

For an order declaring employees of
the FINANCIAL INFORMATION SERVICES
AGENCY managerial or confidential
pursuant to Section 2.20 of the
Revised Consolidated Rules of the
office of Collective Bargaining.

DOCKET NO. RE-105-80

-and-

DISTRICT COUNCIL 37, AFSCME,
AFL-CIO, and COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,

Respondents

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DETERMINATION AND ORDER

By order of the Board of Certification, Professor Joseph R. Crowley was appointed as Trial Examiner in this matter. Hearings were held on June 25 and December 1, 1980 and on January 26, February 27, April 15, June 25, June 30, July 22, and September 11, 1981. In accordance with Part 12 of the Revised Consolidated Rules of the office of Collective Bargaining, the Trial Examiner rendered an Intermediate Report on June 28, 1982. The time in which to file exceptions to the Trial Examiner's Report having expired on July 16, 1982, and no exceptions having been filed by any party hereto, we render the following decision adopting in toto* the Trial Examiner's Intermediate Report, which is set forth below.

Pursuant to the powers vested in the Board of Certification

* Minor revisions and corrections in the Trial Examiner's Intermediate Report are made herein. However, the substantive findings and recommendations of the Report are accepted without change.

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

DETERMINED, that employees in the Financial Information Services Agency in the titles Executive Director, Deputy Executive Director, Computer Systems Manager, Computer Operations Manager, and Administrative Staff Analyst are managerial; and it is further

DETERMINED, that Principal Administrative Associate Barbara Cohen is confidential; and it is further

DETERMINED, that Principal Administrative Associate T. Wuensch is confidential; and it is

ORDERED, that, insofar as the City's petition seeks a finding by this Board that all employees in the Financial Information Services Agency are managerial and/or confidential, that the petition, except as otherwise set forth herein, be, and the same hereby is, dismissed.

DATED: New York, N.Y.
July 28, 1982

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

TRIAL EXAMINER'S INTERMEDIATE REPORT
NATURE OF PROCEEDING

The City of New York appearing by the Office of Municipal Labor Relations (the City or OMLR), filed a petition with the Board of Certification of the office of Collective Bargaining (Board) to have all the employees of the Financial Information Services Agency (FISA) declared managerial and/or confidential within the meaning of Section 1173-4.1 of the New York City Collective Bargaining Law (NYCCBL) and Section 201.7(a) of the Civil Service Law.¹ There are approximately 346 employees in FISA.

District Council 37 (D.C. 37) and the Communication Workers of America (CWA) oppose this petition. D.C. 37 and CWA, taken together, represent about 300 employees of FISA.

BACKGROUND

FISA was created by Executive Order No. 70, issued by the Mayor on September 15, 1976. Pursuant to this Executive Order, the agency is responsible for "all the data processing functions and operations of the City which support the activities of those officers, employees, departments and operations of the City responsible for organizing, compiling, coordinating and reporting upon the City's central financial records, data, and other related information...providing efficient, coordinated and rapid access to such information for the use of those officers, employees, departments and agencies of the City responsible for the determination and administration of the estimated and actual expenditures of the City; the receipt, investment and disbursement of City funds; the issuance of and the

¹ The original petition was filed on January 30, 1980 and an amended petition was filed on April 29, 1980.

payment of principal and interest on the obligations of the City". (Sec. 3, Executive Order No. 70). FISA, as part of the Integrated Financial Management System (IFMS), maintains and operates the unified computer system under which the budget, accounting, purchase control and payroll of most City agencies are coordinated.

FISA is composed of four groups which report to the Executive Director, the head of the agency. The four groups are (1) Information Service (2) Data Processing Systems (3) Planning and Control (4) Finance and Administration Group. Each group is headed by a Senior Director with the exception of Planning and Control, which is headed by a Director.

Each of these four groups is divided into two or four divisions. In the Information Service Group there are two divisions, Data Center Services and User Services. Data Processing Systems has two divisions, Application Services and Technical Services. Planning and Control also has two divisions, General Services and Performance Measurement Control. Finance and Administration has four divisions, Fiscal Services, Office Services, Human Resources and Financial Planning.

POSITIONS OF THE PARTIES

OMLR's Position

It is the City's position that all employees of FISA are managerial/confidential with the meaning of Section 1173-4.1 (NYCCBL) and Section 201.7(a) of the Civil Service Law due to the functions FISA performs and its relationship to other City agencies such as

OMLR and the Office of Management and Budget (OMB). The employees of these latter two agencies were found to be managerial/confidential.²

During the course of the hearings held herein, the City took the alternative position that if all employees of FISA were not found to be managerial/confidential, certain employees of FISA in specific titles are managerial/confidential by virtue of the functions performed within FISA and/or as a result of their relationship to certain managerial employees of FISA.

In support of its position that all FISA employees should be excluded from participation in collective bargaining, OMLR contends: (1) Preparation of Budget. OMLR contends that FISA employees in the User Services and Application Services divisions have been involved with OMB in the technical preparation of the City's budget. OMB's representative, Geiger, meets with persons in FISA to make sure that the information OMB requires will be produced by FISA and in the form desired by OMB and that FISA's employees involved in the process are aware of the information requested. According to Geiger, she shares with the involved FISA employees information they need to know concerning the policy directions the City is taking with respect to the budget to make sure that FISA's programming of the computers accurately reflects OMB's directives or requests. Two weeks before the budget is made public it is "locked up", but some people in FISA do have access to it and know what is in the budget before it

² Decisions 75-74 and 11-76.

is made public.³ (2) FISA and OMLR - OMRL contends that FISA provides it with information needed to formulate collective bargaining policy, such as information on job titles, salaries, longevity factor and other related matters. The City contends that FISA and OMLR were involved in making preparations for a threatened strike during the prior collective negotiations. FISA is involved, at OMLR's request, in the costing out of various percentage increases and in the implementation of negotiated wage increases or other agreed upon benefits. Finally, OMLR points out that FISA is responsible for the timely payment of wages to all City employees.

J. LaPortel Senior Director of the Finance and Administration Group of FISA, does assist OMLR in the preparation for and negotiation of collective bargaining agreements covering employees of FISA. In so doing, LaPorte consults with Senior Directors, Directors, Deputy Directors, Senior Managers and Managers of FISA. (3) FISA's Internal Budget - Upon receipt from OMB of initial figures concerning FISA's proposed budget, the Executive Director meets with Senior Directors, Directors, Deputy Directors, Senior Managers and Managers to obtain input in compiling FISA's budget.

CWA's Position

The employees of FISA do not analyze or interpret data but simply organize, compile, coordinate and report data as required. In essence, FISA is the City's electronic record-keeper. Its computers contain the City's books of account, the budget, monitor all spending and revenues and produce the City's payroll.

³ It would appear to be uncontroverted that FISA employees are not involved in any manner with respect to the decision-making process in budget Preparation.

In the question of budget activity, the information within the system is coded so that the information available to FISA employees has no meaning to them. In budget preparation, the information comes in "bits and pieces" so that the overall concept of the contents of the budget is not available to FISA employees generally and, as to these bits and pieces, the information is coded.

In sum, FISA employees are unlike OMB employees who sort, analyze data and transmit it to OMLR for use in collective bargaining. FISA simply forwards to OMLR data requested. FISA is merely a service agency to OMB and does not participate in the decision-making process of formulation of the budget, thus distinguishing it from OMB and its employees.

D.C. 37's Position

To a substantial degree, D.C. 37's position is similar to that of CWA: FISA's function is simply to collect, process and organize the data it receives and to furnish City agencies with requested information. FISA has no policy-making or analytical function outside its own agency. Thus, there is no basis to have all the employees of FISA designated managerial and/or confidential.

Prior Proceeding

OMLR filed a petition on June 29, 1977, seeking the same relief. The Board dismissed the petition, based upon its administrative investigation, but without prejudice to the filing of a new petition seeking managerial and/or confidential designation of individuals employed in the agency. The basis of the dismissal was

that no evidence has been offered herein to warrant a finding that the agency's purpose and functions are such as to render all of its employees inherently managerial/confidential."⁴

The Board, however, did note that persons employed in several titles within FISA are and have been excluded from bargaining because those titles or their predecessor titles were previously found to be managerial. Such titles are Executive Director, Deputy Executive Director, Computer Systems Manager, Administrative Manager and some predecessor titles to Administrative Staff Analyst and Associate Staff Analyst.⁵

DISCUSSION

OMLR seeks a determination that all persons employed by FISA are managerial or confidential within the meaning of NYCCBL Section 1173-4.1.

This section provides in pertinent part:

"...neither managerial or confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively;...."

The above section does not define a managerial or confidential employee, but the Board has, in the past, applied the criteria set forth in Section 201.7(a) of the Civil Service Law which

⁴ Decision No. 33-78, p. 15.

⁵ Id.

provides in relevant part:

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

Thus, there are established by statute, four criteria to be used in designating persons as managerial. The first is formulation of policy, the other three deal with labor relations functions or responsibilities on behalf of the public employer.

With respect to formulation of policy, policy has been defined as 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.⁶ The term "formulate would include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also would include persons who regularly participate in the essential process which results in a policy proposal and the decision to put such proposal into effect.⁷ It would not include one who simply engages in research or in the collection of data

⁶ State of New York, 5 PERB ¶3001 at 3005 (1972).

⁷ Id.; City of Binghamton, 12 PERB ¶3099 (1979).

necessary for the development of a policy proposal.⁸

The remaining three criteria for managerial employees, as noted supra, specifically relate to labor relations functions of the employer: first, persons who may reasonably be required on behalf of the employer to assist directly in the preparation for or conduct of collective negotiations. However, mere consultation with supervisory personnel on the feasibility or implications of negotiation proposals does not provide a basis for designating such supervisory personnel as managerial.⁹ The second, administration of the agreement, requires a "major role in the administration of the agreement", which has been held to mean a role beyond that of routine or a clerical nature; rather, it requires that the person be one who has authority to exercise independent judgment in the implementation of the agreement. Simply participating in the first step of the grievance procedure has been held not to satisfy this criterion.¹⁰ The third, personnel administration, involves a major role "in personnel administration provided that such role is not of a routine or clerical nature" and requires the exercise of independent judgment. Authority to hire or to recommend the retention of or the disciplining of employees would be indicia of supervisory status but would not satisfy this criterion.¹¹

As to confidential employees, the designation of employees as

⁸ Id.

⁹ 5 PERB ¶3001.

¹⁰ 12 PERB ¶3099.

¹¹ Id.

confidential is limited to employees who assist and act in a confidential capacity to managerial employees in the exercise of labor relation responsibilities as described above.

The Board, in its prior determinations relating to managerial employees, has developed certain guidelines whereby the City may establish a prima facie case of "manageriality" upon presenting evidence establishing that (a) the civil service specifications for the job title include clear authorization for the assignment of managerial duties to persons employed in the title; (b) persons employed in the title are actually assigned to managerial duties; (c) the title is covered in the Managerial Pay Plan.¹²

As noted previously, OMLR seeks the exclusion of all FISA employees from collective bargaining rights as managerial/confidential employees or, in the alternative, the designation of certain employees as managerial employees. These two issues shall be treated seriatim.

The Exclusion of All FISA
Employees as Managerial/
Confidential

It would seem that in seeking the exclusion of all employees of FISA as managerial/confidential, the petitioner regards FISA as something of an alter ego of OMB and that the reason for the exclusion of all OMB employees as managerial/confidential would have equal application to the employees of FISA. However, the decision of

¹² Civil Service Technical Guild, Local 375, DC 37 v. Anderson, Dissenting opinion, 79 AD 2d. 541, 545, 434 NYS 2d 13,17 (1st Dept. 1980) The court of Appeals reversed based on the Dissenting Opinion. 55 NY 2d 618, 446 NYS 2d 264 (1981).

the Board in the prior FISA proceeding clearly indicated a marked difference in mission and responsibilities between FISA and OMB.¹³

In seeking this overall exclusion, it is the City's position that all employees of FISA are managerial because "they are active participants in the negotiating process between the City of New York, by its office of Municipal Labor Relations, and the various labor organizations which represent City employees".¹⁴ Secondly, the City maintains that all FISA employees are confidential in that "they act in a confidential capacity to OMLR and to OMB because they are privy to labor relations information not intended for the eyes and ears of members of a bargaining unit or their representatives".¹⁵

I will first consider the relationship between FISA's functions and OMLR in the negotiating process between the City and the various unions which represent City employees. The City, in its petition, alleged that employees in FISA are responsible for the collection and organization of data which, as noted in Decision 11-76, is used by the Office of Management and Budget in connection with collective negotiations on behalf of the City.

In support of this allegation, OMLR relied upon the testimony of Harry Karetzky, Deputy Director of OMLR, and James Hanley, Assistant Director of OMLR.

¹³ Decision No. 33-78.

¹⁴ OMLR brief, p. 17.

¹⁵ Id.

It was their testimony that FISA provided OMLR with information which was used "to form policy". Such information included job titles, salaries, longevity factor, cost of various percentage increases, number of persons at various salary levels. Some of this information was given to the labor organizations. In obtaining such information, Karetzky met with the Executive Director of FISA and J. Messina, Senior Manager, Payroll. Also Karetzky, in anticipation of and preparation for a strike threatened during the course of the prior negotiations, met with the Executive Director and Messina to draw up procedures to ensure that non-strikers would be paid during the course of the strike and that strikers would be docked. Messina devised a timekeeping form to accomplish this goal in the event a strike took place.

Further, it was pointed out that Messina's Payroll Section was responsible for implementing any wage increase agreed upon in negotiations, and Messina would advise OMLR as to the time it would take to effect such changes with payroll.

No one in FISA, however, had any input in, or made recommendations as to the amount of the increase or other benefits to be negotiated. There is no testimony that anyone at PISA participated in the overall City negotiations with the unions.

I do not find that the record supports a conclusion that, because of FISA functions in relation to OMLR, all the employees should be designated confidential, much less managerial.

Certainly the fact that some employees, unnamed save for Messina,

were consulted as to how to set up procedures to ensure that non-striking employees would be paid and strikers docked, is not a basis for finding that all employees are managerial or confidential. Rather, it was simply a technical matter as to how this goal could be achieved in the computer operation. Nor would it even support a finding that Messina was a managerial/confidential employee.

With respect to the information described above, which FISA furnished to OMLR, petitioner relies upon PERB decisions in City of Binghamton, 12 PERB 4022 and County of Genesee, 7 PERB 7044 to support its position. I find this reliance misplaced. In both of these cases only the Manager or Director of Data Processing was involved, not all of the employees of the Data Processing Department; other employees in Data Processing were not included in the proceeding. Further, as mentioned in County of Genesee, the Director of Data Processing was privy to the employer's position on negotiating proposals and counterproposals, which is not the case here. The type of information furnished here, number of job titles, salary levels and number of persons in salary levels, would not appear to create a confidential relationship within the statute. Even the furnishing of the cost of various percentage increases has been held not to be a basis for a finding of confidential status. Washington Post, 254 NLRB #14. In sum, there is no evidence in the record that the employees of FISA are privy to the thinking processes of the City's policymakers concerning the City's labor relations.

I now consider OMLR's second contention: that all FISA employees are confidential because they act in a confidential capacity to OMLR and OMB. In support of this contention, OMLR relies upon the fact that the financial records compiled by FISA form the basis for the preparation of the City's budgets. However, the responsibility for the preparation of the budget clearly rests with OMB. The City argues that FISA assists OMB in the preparation of the budget. However, simply put, FISA's role is to put material into the computer system at OMB's request. There are conferences between Geiger of OMB, Newell of FISA, and other FISA employees, but the thrust of these conferences is not the analysis or formulation of budget proposals or directive, but rather whether or how the material can be put into the computer in a manner that will accurately reflect OMB's directives or position.

It is interesting to note that, in connection with the preparation of the budget, OMLR's assertion of confidentiality was concerned primarily with the question of confidentiality of the budget as such rather than its relation to labor relations matters, such as the mayor's decision to discontinue any agency, transfer functions from one agency to another, establish a new agency or whether or not the budget is or will be balanced. Obviously, such Mayoral plans and a balanced budget would be confidential until released to the public but it is not necessarily the type of confidentiality referred to in Section 201.7.¹⁶

¹⁶ During the hearing it was contended that Motor Vehicle Operators should be confidential because they act as couriers carrying input to FISA and reports back to City agencies in unsealed containers. Certainly it would seem clearly within the spirit of Section 201.7 and its legislative history that the containers be sealed rather than take away one's participation in organizational and bargaining rights.

No City witness testified as to the extent, if any, to which such data is relevant to collective bargaining.

Finally, both CWA and D.C. 37 produced witnesses who testified that the budget information placed into the computer is coded or otherwise encrypted so that the information would be meaningless to the employees at FISA, and the work is so distributed that no one other than the Executive Director would have access to all the information. This testimony was not rebutted.

The Board, in excluding all employees of the Bureau of the Budget (now OMB), did so because OMB was actually involved in the formulation and administration of the City's labor relations and executive policies.¹⁷ The Board, in support of this determination, pointed out that OMB prepares the annual expense budget, surveys agencies to determine budgetary requirements, sets up performance standards for agencies and their employees, reviews management procedures in agencies, and surveys wage and salary problems, all of which directly affect and relate to labor relations. In effect, OMB has a direct and indirect participation in collective negotiations on behalf of the City in conjunction with OMLR.¹⁸ The record herein clearly demonstrates that FISA is not similarly involved in the formulation and administration of the City's labor relations and executive policies. Admittedly, FISA does furnish to OMB information

¹⁷ Decision No. 11-76.

¹⁸ Id.

and data which enables OMB to discharge its responsibilities, but this does not give rise to a finding that FISA is a co-participant with OMB in the formulation and administration of the City's labor relations policies. As pointed out by the Board in its decision dismissing the prior petition relating to FISA employees, there are various City agencies such as "Office of the Comptroller and the Finance Administration, which are concerned with the use and/or formulation of financial information [and which] employ persons in the same titles as employed by FISA."¹⁹ Employment in these agencies has not been held automatically to render all employees managerial/confidential as in the case of OMB and OMLR.²⁰

Finally, there is simply no showing in the record that all employees of FISA satisfy the statutory criteria or the Board's guidelines either as to managerial or confidential status.

Therefore, I conclude, as did the Board in the prior proceeding, that there is no evidence in the record to warrant a finding that the agency's purpose and functions are such as to render all of its employees inherently managerial/confidential.

Designation of Certain Employees The
as Managerial/Confidential

The alternative position of the City is that certain employees are managerial/confidential by virtue of the duties they perform or

¹⁹ Decision No. 33-78, p. 14.

²⁰ Id.

may be called upon to perform "given the title they are in; and/or because they assist and act in a confidential capacity to managerial employees and/or because they are privy to confidential information."²¹

The employees that petitioner seeks to exclude may be divided into categories.

Category A - Those employees in titles which have been excluded, Citywide, from participation in the bargaining process as managerial.

In its prior FISA decision, the Board stated that "persons employed in several titles within FISA are and have been excluded from bargaining because we found those titles or their predecessor titles to be managerial/confidential". Further, the Board held: "Clearly within FISA there are employees responsible for the formulation of policy and personnel administration and who do represent the City in collective negotiations and contract administration, and therefore, such employees have been excluded from collective bargaining."²² Such titles are Executive Director; Deputy Executive Director (FISA house title 3 Senior Directors); Computer Systems Manager (FISA house titles 3 Directors, 9 Deputy Directors, 3 Senior Managers and 1 Manager); Administrative Manager (FISA house titles 2 Directors, 1 Deputy Director and 1 Senior Manager); Administrative Staff Analyst (FISA house title - 1 Senior Manager); Associate Staff Analyst. There does not appear to be anyone presently employed by FISA in this last

²¹ City brief, p. 25.

²² Decision No. 33-78, p. 15.

civil service title. All of the above titles, save Associate Staff Analyst, are in the City's Managerial Pay Plan and are assigned to and perform managerial duties.

The unions do not challenge the exclusion of these job titles and have not submitted any cogent testimony to support a contrary conclusion. Therefore, I conclude that the above job titles,²³ except Associate Staff Analyst, are excluded as managerial/confidential.

Category B - Job title - Computer operations Manager. This job title is in the City's Managerial Service. There is one employee in this job title. The FISA house title is Manager. There does not appear to be any objection by the unions to the designation of managerial.

Category C - Job titles - Directors, Deputy Directors, Senior Manager and Manager. First, all of the employees with the job titles of Directors and Deputy Directors have civil service titles of either Computer Systems Manager or Administrative Manager and were deemed excluded in the discussion under Category A supra.

²³ See CWA brief, pp. 2, 16.

As to the job title Senior Manager, 5 such title-holders have civil service titles which were deemed excluded from bargaining in Category A supra and are not now represented by a labor organization of participating in collective bargaining. The remaining five Senior Managers hold civil service titles of Principal Administrative Associate III (2), Computer Associate (1), Computer Specialist (1), and Associate Accountant (1). While these employees have the same FISA house title as the 5 Senior Managers excluded, FISA has not upgraded their civil service title to a managerial level, undoubtedly because their present scope of responsibility does not warrant it. Thus, while they have the same house title as the five excluded, there are not the similar presumptions giving rise to a prima facie finding of manageriality. Nor have sufficient facts been presented to warrant a finding of confidential status, save the fact that they may be consulted by LaPorte, Senior Director, in connection with the resolution of a grievance, although there is no evidence that these five were ever part of such consultation.

They do participate in the hiring process, but that is an indicium of supervisory status, not managerial status. Although LaPorte does consult with Senior Managers and Managers concerning collective bargaining involving FISA employees, as noted supra, mere consultation with supervisory employees on the feasibility or implications of negotiating proposals does not provide a basis for a managerial designation.

Therefore, I find no basis to designate these 5 Senior Managers,

who are not in managerial civil service titles and who are presently participating in collective bargaining, as managerial/confidential.

While it may seem anomalous to have 5 Senior Managers excluded as managerial/confidential and 5 Senior Managers in the bargaining process, this is the manner in which the agency, in its use of in agency titles, chose to organize itself. There is no such anomaly if one considers the civil service titles, particularly where job descriptions indicate that the scope of responsibility of the first group of five is clearly more extensive than the second group of five.

As to the job title Manager, there are 21 employees in this FISA house title. of the 21, two are in civil service titles previously found to be managerial, while the remaining 19 are in civil service titles which have not been excluded from collective bargaining. For all of the reasons set forth in the discussion above relating to Senior Managers, I do not find a basis to exclude the 19 as managerial/confidential. As PERB has stated:

“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.”²⁴

Category D - Personnel Function

(a) Roslyn Goldberg - Senior Manager in Human Resources (Personnel) Division. Her civil service title is Administrative

²⁴ 5 PERB ¶3001 at 3004.

Staff Analyst, which title is among those excluded in Category A supra, and properly so, as she has a major role in the day-to-day administration of personnel matters.

(b) John Bon - Principal Administrative Associate. OMLR seeks his exclusion as confidential. The basis for such exclusion is that he administers employee benefits, processes pay increases provided in the collective bargaining agreement, administers the employee blood donor program, handles exit interviews processes employment applications. His role is not a major role in personnel administration. Further, there does not appear to be a basis to find that he acts in a confidential relationship with Goldberg. Goldberg did testify that she would discuss grievances with Bon, Kahn and Cohen, but she also testified that she has not been involved in grievances.

I conclude, therefore, that Bon should not be excluded from collective bargaining, a right he presently has.

(c) Anita Kahn - Office Associate. She was described by Goldberg as a timekeeper, responsible for ensuring that overtime, shift differential, holiday pay, etc., as provided in the agreement, are paid. This, too, is a routine clerical task, certainly not a major role in the administration of the contract. Further, there is no evidence that she acts in a confidential capacity to Goldberg.

I conclude, therefore, that she should not be excluded from collective bargaining, a right she presently has.

(d) Barbara Cohen - Principal Administrative Associate. Goldberg testified that Cohen acts as her deputy and is involved in administering certain parts of the contract. While there is nothing in the record to indicate a major role in contract or personnel administration, since Goldberg is a managerial employee with labor relations responsibilities, her deputy would seem to warrant the designation of confidential. While Goldberg did not testify specifically as to the role of Cohen as her deputy, other than acting in her absence, it would seem necessary that a person acting as her deputy be designated as confidential, particularly in the light of Goldberg's responsibilities.

(e) Sonia Flink - Administrative Manager. This job title was dealt with in Category A and excluded as managerial.

(f) Wuensch - FISA Title: Manager - Civil Service Title: PAA III. After the Executive Director and other managerial employees determine FISA's budget, it is Wuensch's responsibility to prepare, draft, compile and manage the budget, and to make changes in the budget in consultation with LaPorte, a Senior Director. The evidence does not indicate that Wuensch is involved in policy formulation, but he is necessarily involved in discussions of budget policy and direction, which certainly have an impact on matters relating to labor relations of the agency. Thus, in view of this and his relation to LaPorte in consultation relating to changes in the agency's budget, I find him to be confidential.

Category E - Confidential Employees. During the hearing, the

City submitted Exhibit 8, containing the names of 30 employees who have access to the City budget to make changes during the two-week period the budget is "locked up" and inaccessible to the public. The City asks that all such employees be designated confidential. However, in its brief asking for such relief, the City did not respond to the evidence of the Unions that such access is to limited areas and that the data they deal with is coded, nor did the City submit evidence to indicate the relationship of these 30 employees to labor relations functions or policies. It does not appear that these 30 employees are in any way privy to OMB's or OMLR's decisions relating to labor relations matters.

Therefore, I find and recommend as follows:

- (1) That the petition, insofar as it seeks to have all employees in FISA designated managerial/confidential, be denied;
- (2) That employees in the following civil service titles be designated managerial:
Executive Director, Deputy Executive Director, Computer Systems Manager, Computer Operations Manager, Administrative Staff Analyst;
- (3) That Barbara Cohen, deputy to managerial employee Senior Manager Goldberg, be designated confidential;

(4) That T. Wuensch be designated
confidential;

(5) In all other respects that the requested
relief be denied.

SIGNED
Joseph R. Crowley
Hearing Officer

June 28, 1982