

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of the Application of

THE CITY OF NEW YORK,

Petitioner,

For an Order declaring all employees  
in various sections of the Mayor's  
Office managerial or confidential pur-  
suant to Section 2.20 of the Revised  
Consolidated Rules of the Office of  
Collective Bargaining,

DECISION NO. 7-84

-and-

DISTRICT COUNCIL 37,  
AFSCME, AFL-CIO,

DOCKET NO. RE-104-80

-and-

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

-and-

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

-and-

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

-and-

CIVIL SERVICE BAR ASSOCIATION,  
affiliated with LOCAL 237,  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS,

-and-

ALLIED BUILDING INSPECTORS,  
Local 211, IUOE, AFL-CIO,

Respondents.

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DETERMINATION AND ORDER

On February 2, 1979, the City of New York by its Office of Municipal Labor Relations (hereinafter "the City" or "OMLR") filed, pursuant to Section 2.20 of the Revised Consolidated Rules of the office of Collective Bargaining (hereinafter "OCB Rules") a petition (docketed as RE-100-79) seeking a determination that all employees in five sections of the Office of the Mayor were managerial or confidential.<sup>1</sup> Hearings were scheduled before a Trial Examiner of the Office of Collective Bargaining (hereinafter "OCB"). However, at the request of the parties, the proceedings were adjourned before the commencement of hearings in order to permit exploration of settlement possibilities.

By letter dated January 30, 1980, the City sought to withdraw its petition and to file a new petition covering six sections of the Mayor's Office, adding the Office of Operations to the list submitted with RE-100-79.<sup>2</sup> This petition, docketed as RE-104-80, affected 147 employees in

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<sup>1</sup> The sections of the Mayor's Office subject to the petition docketed as RE-100-79 were:

New York City Commission for the United Nations  
and the Consular Corps  
Office for the Handicapped  
Voluntary Action Center  
Office of Labor-Management Services  
(Bureau of Labor Services)  
Midtown Enforcement Project.

<sup>2</sup> At its meeting on February 4, 1980, the Board of Certification (hereinafter "the Board") approved the withdrawal of RE-100-79.

collective bargaining units certified to five different unions.

By letters dated February 7 and 21, March 5, 18 and 26, 1980, respectively, Local 237, IBT on behalf of its affiliate, Civil Service Bar Association (hereinafter "CSBA") , Local 375, Civil Service Technical Guild (hereinafter "CSTG" or "Local 375"), the Communications Workers of America (hereinafter "CWA"), District Council 37 (hereinafter "D.C. 37") and Allied Building Inspectors, Local 211 (hereinafter "Local 211") objected to the City's petition, claiming that employees in titles certified to each of them are neither managerial nor confidential and should remain in their present bargaining units.

On May 15, 1980, Local 371, Social Service Employees Union (hereinafter "Local 371") filed an application to intervene in opposition to the petition asserting, similarly, that employees in titles which it represents are not managerial or confidential.<sup>3</sup>

Hearings were held before Philip Feldblum, Esq., the

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<sup>3</sup> This application was granted by the Trial Examiner, subject to the ultimate decision of the Board (Tr. 6). On this basis, Local 371's attorney was permitted to participate in the hearings held in this matter. However, D.C. 37, which holds the bargaining certificate for the titles represented by its affiliated local, assumed primary responsibility for representation of Local 371's interests (Tr. 4-6). References to the official transcript of hearings in this case are indicated by "Tr." followed by a page number or numbers.

OCB-designated Trial Examiner, on May 16, October 14 and December 8 and 18, 1980, as well as on February 11 and 18, 1981. Hearings scheduled for April 20 and May 4, 1981 were cancelled and the proceedings adjourned sine die in order that the parties might pursue settlement discussions. The Trial Examiner was periodically advised by the parties that negotiations were continuing and that a settlement was anticipated.

On April 11, 1983, the City filed an amended petition which seeks a determination that 229 employees covered by collective bargaining agreements in eleven sections of the Mayor's Office are managerial or confidential. In addition to the offices that were the subject of its original petition:

Office of Operations  
Commission for the United Nations and the  
Consular Corps  
Bureau of Labor Services  
Voluntary Action Center  
Office for the Handicapped  
Midtown Enforcement Project,

the City seeks to exclude from collective bargaining all employees of the following offices:

Commission on the Status of Women  
Juvenile Justice Information System  
Adult Justice Information System  
Arson Task Force  
Office of Single Room Occupancy Housing.

Respondents CWA, D.C. 37, (on behalf of its affiliated locals and itself), Local 211 and CSBA filed letters of objection

to the amended petition.

On June 13, 1983, the City filed a supplemental statement in which it elaborated upon its position that the eleven sections of the Mayor's office are inherently managerial or confidential. Documentary evidence was submitted in support of this claim. Substantive responses to the City's statement, each dated July 13, 1983, were received from CWA, D.C. 37, CSBA and Local 211.<sup>4</sup>

On December 9, 1983, the City submitted an additional statement to which D.C. 37 responded by letter dated December 13, 1983.

#### Procedural Matters

During the course of the proceedings in this case, a number of issues were raised before the Trial Examiner concerning which final decision was reserved for the Board. Before considering the merits of the City's petition, we shall address these threshold questions.

(1) Contract bar

By its letter of February 7, 1980, Local 237 asserted, on behalf of CSBA, that the Board should dismiss the City's petition because it failed to comply with section

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<sup>4</sup> By letter dated July 11, 1983, Local 371 advised the Board that it would thereafter in this proceeding be represented by D.C. 37.

2.20(b)(1) of the OCB Rules.<sup>5</sup> The OCB Director of Representation (hereinafter "Director") responded to Local 237 by letter dated May 7, 1980, reporting our refusal to apply the "contract bar" rule to this case. The Director noted that an exception to the principle of contract bar has been applied where an entire agency is alleged to be managerial or confidential based upon its functions as an agency rather than upon the duties of individual employees. He also informed Local 237 of the Board's decision to extend this exception to the instant case, which involves an allegation that organizational segments of an agency are managerial or confidential because of their functions as entities.<sup>6</sup>

(2) Property party

By its letter of February 21, 1980, CSTG objected to

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<sup>5</sup> Rule 2.20(b)(1) provides as follows:

A petition for the designation of employees as managerial or confidential may be filed:

1. Not less than five (5) or more than six (6) months before the expiration date of the contract covering the employees sought to be designated managerial or confidential:...

The titles represented by CSBA that are subject to this petition are Attorney and Associate Attorney. The collective bargaining agreement covering these titles expired on December 31, 1979. Thus, under Rule 2.20(b)(1) above, the period for filing a petition for designation of employees covered by the CSBA agreement as managerial or confidential would have been the month of July, 1979. As noted above, the City filed the instant petition on January 30, 1980, which was timely with respect to all other unions representing the subject employees.

<sup>6</sup> See Minutes of Meetings of the Board of Certification (March 11, 1980 and April 14, 1980).

the City's failure to include it as a party respondent in this case and sought to have the petition dismissed as to employees represented by it. In the alternative, CSTG moved to intervene in the proceedings.<sup>7</sup> The Trial Examiner received, the union's February 21 letter in evidence (CSTG Exhibit 1) and permitted the intervention, but noted that final determination of the motions was for the Board (Tr. 8). We affirm the Trial Examiner's disposition of these matters, noting that CSTG enjoyed the fullest participation in the Board's investigation in this case.

(3) Intervention

As noted above, on May 15, 1980, Local 371 filed an application to intervene in opposition to the City's petition. The City indicated that it had no objection to the intervention (Tr. 4), and the Trial Examiner granted the application, subject to our ultimate ruling. We affirm the Trial Examiner's ruling. We also note that Local 371 participated fully in our investigation in this case until, by letter of July 11, 1983, it advised the Board that, for the remainder of the proceedings, its interests would be represented by D.C. 37.

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<sup>7</sup> The bargaining certificate for employees subject to this petition who are represented by CSTG is held by the local in its own name. See Certification No. 26-78 (as amended).

Positions of the Parties

City of New York

The City maintains that all employees in the eleven named sections of the Mayor's Office are managerial or confidential within the meaning of Section 1173-4.1 of the New York City Collective Bargaining Law (hereinafter "NYCCBL")<sup>8</sup> because each of these sections is "centrally involved in the formulation and administration of Citywide labor relations and/or executive policies." The City relies upon Decision 19-75, wherein the Board held that all employees of the Executive Management and Executive and Administrative Services Sections of the Mayor's office were confidential because "these sections constitute the executive branch of the Mayor's office, which formulates and administers executive policy." Also citing Decisions 75-74 and 11-76, the City notes that we have excluded from collective bargaining all employees of the office of Municipal Labor Relations, the Office of Collective Bargaining and the Bureau of the Budget, on the rationale that the work of

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<sup>8</sup> NYCCBL Section 1173-4.1 provides in relevant part:

Public employees shall have the right to self organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively:....



these offices is inherently managerial and/or confidential. Similarly, OMLR, maintains, since the sections of the Mayor's Office named in its petition are responsible for the formulation and administration of executive policy, the work of their employees is inherently managerial and/or confidential. In the event that the Board determines that one or more of the subject sections of the Mayor's Office is not managerial or confidential, however, the City seeks the opportunity to present additional evidence on the managerial and/or confidential status of individuals employed in such sections.

District Council 37

On behalf of CSTG, Local 371 and itself, D.C. 37 disputes the City's claims of managerial or confidential status. It cites the State Laws of 1971<sup>9</sup> wherein the Legislature, in enacting section 201.7(a) of the Civil Service Law, specifically stated:

... It is not the intention of the legislature to destroy existing employer employee negotiating units such as principals or other school administrators who do not formulate policy or who don't have a significant role in employee relations as described in [section 201.7]. Nor is it the intention of the legislature to impede,

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<sup>9</sup> Ch. 503 [1971] N.Y. Laws §5, as amended by Ch. 504 [1974] N.Y. Laws §2, as further amended by Ch. 854 [1975] N.Y. Laws §1 (eff. August 9, 1975).

impair or otherwise interfere with the exercise of rights of organization and representation of public employees ... who do not formulate policy or who do not have a significant role in employee relations as described in [section 201.7] ....

D.C. 37 asserts further that the City has the burden of proving managerial or confidential status and that this burden has been defined by the State Public Employment Relations Board (hereinafter "PERB") to require:

- (1) with respect to the formulation of policy, more than participation in a clerical or advisory role or as a resource person;
- (2) with respect to participation in collective negotiations, more than a role as observer or resource person;
- (3) with respect to administration of collective bargaining agreements, the exercise of independent judgment in effecting changes necessitated by implementation of an agreement, and a role that is more than routine or clerical in nature;
- (4) with respect to personnel administration, the exercise of independent judgment and fundamental control over the direction and scope of the mission of the employer;
- (5) with respect to confidential status, either acting in a confidential capacity to a person in category (2), (3) or (4) above or, alternatively, privity to labor relations information not intended for the eyes and ears of bargaining unit members or their representatives.<sup>10</sup>

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<sup>10</sup> D.C. 37 cites City of Binghamton, 12 PERB ¶4022 (Acting Director's Decision, 1979).

D.C. 37 emphasizes, in particular, that the designation of "confidential" cannot be given to an entire agency, but only to individuals, based upon their relationships with employees who exercise managerial functions in the areas of contract negotiation, contract administration, or personnel administration. D.C. 37 cites Chairman Anderson's letter of October 9, 1980 (D.C. 37 Exhibit 1 in evidence) to the same effect.<sup>11</sup>

Communications Workers of America

CWA has no objection to the exclusion from collective bargaining of employees represented by it in the Office of Operations. With respect to all other employees and offices

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<sup>11</sup>Chairman Anderson's October 9, 1980 letter responds to a request by D.C. 37 that the City be directed, in connection with this and four other petitions, to comply more fully with OCB Rule 2.20(a) by providing specific information in support of its claims of managerial and confidential status. The Chairman's letter required the City to specify:

- (1) whether it is contending that the employees concerned are managerial or confidential; and
- (2) where the City seeks a confidential designation, the names of employees it seeks to have so designated and the names of their respective managers engaged in labor relations and personnel administration, on whose relationship with petitioned employees the City relies.

It is not clear whether this directive was complied with in this case. However, since the City has taken the position that organizational segments of the Mayor's Office are inherently managerial and/or confidential, the information requested is not relevant to a determination of the issue presented.

included in the City's petition, however, CWA asserts that there is either insufficient basis for exclusion or the City has failed to make a prima facie case for exclusion.

CSBA and Local 211

CSBA and Local 211 oppose the City's petition both insofar as it seeks to exclude from collective bargaining the individuals represented by CSBA and Local 211, and insofar as it seeks to have the office of Operations and Midtown Enforcement Project, where these individuals work, declared managerial or confidential as entities.

Discussion

During the lengthy period from the filing of the City's first petition seeking to have employees in five sections of the Mayor's Office declared managerial or confidential<sup>12</sup> to the filing of the present petition which, as amended, seeks to exclude employees in eleven sections of that office, the Board has permitted numerous adjournments in order to afford the parties an opportunity to resolve this matter. Settlement discussions, having been unsuccessful, this matter is now before us for decision.

The issue for our determination is whether various sections of the Mayor's Office should be designated in-

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<sup>12</sup> RE-100-79.

herently managerial and/or confidential because each is "centrally involved in the formulation and administration of citywide labor relations and/or executive policies."<sup>13</sup>

In evaluating a claim that employees of the City of New York are managerial or confidential and therefore ineligible for collective bargaining under section 1173-4.1 of the NYCCBL, we are guided by section 201.7(a) of the New York State Civil Service Law (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).

Office of Operations

Created in 1977 by Executive Order 75 (E.O. 75), the Office of Operations is responsible for:

- (a) coordinating and directing New York City governmental operations;
- (b) assuring a responsive management structure,

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<sup>13</sup> City's supplemental statement of position, ¶2.

- (c) developing and maintaining a competent management organization,
- (d) planning, devising and innovating cost-effective improvements to reduce operating expenses, and minimize the need for additional capital or human resources,
- (e) providing the leadership, guidance and motivation to the operations management and work forces to ensure maximum productivity, within the terms of the City's labor contracts and resource capabilities, and
- (f) directing the Mayor's Management Planning and Reporting System.<sup>14</sup>

The City asserts that the office of Operations is a direct extension of the Mayor's executive staff and is involved in "every aspect of the City operations," including personnel, labor relations and budgetary operations (Tr. 90).

For example, it is alleged that the entire staff of operations is directly involved in preparation of the bi-annual Mayor's Management Report (Tr. 182) which contains, for each City agency, a statement of performance goals for the current fiscal year and a statement of actual performance for the prior fiscal year. The preparation of this report

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<sup>14</sup> E.O. 75 §2 (1977).

involves, inter alia, working with budgetary information that is confidential until its official release (Tr. 193). Office of Operations staff, together with the office of Management and Budget (hereinafter "OMB") , also negotiate with the agencies concerning their budgetary requests and monitor their compliance with performance goals.

The record in this case shows that the management functions of the office of Operations were previously performed by OMB (Tr. 115). Upon the creation of the Office of Operations, some OMB employees were transferred to Operations (Tr. 231) and, it is alleged, because of the transfer of functions from OMB, Operations is now integrally involved in the city's productivity planning and labor-management relations.

As an example of the latter, during the 1980-1982 labor negotiations between the City and various unions, when there was talk of a possible strike, the Office of Operations participated with the office of Municipal Labor Relations and other agencies in planning the City's strategy (Tr. 89). In addition, Operations staff participated in a labor-management committee formed during those negotiations to discuss union demands for improved workmen's compensation benefits (Id.). Operations also worked with OMLR on a project designed to upgrade the status of City inspectors (Id.). And, under

the citywide Productivity Program, the Office of Operations has coordinated efforts to establish labor-management committees throughout the City.

In support of its position that the Office of Operations is inherently managerial or confidential, OMLR also asserts that the employees of that office "may reasonably be required to assist directly or indirectly in the conduct of collective negotiations or to act in a confidential capacity to employees who do assist in collective negotiations." In addition, the City argues that all employees of Operations are confidential because they are privy to labor relations and budgetary information not intended for the eyes and ears of bargaining unit members or their representatives.

In opposition to the City's petition, D.C. 37 asserts that employees in operations represented by it or by its affiliate, Local 375, are not managerial or confidential, as they are involved in the functions of that office only in a "fragmented and piece-meal way," assisting those who do research or collect data for the development of policy proposals; nor, D.C. 37 asserts, do these employees assist managers in a confidential capacity within the meaning of section 201.7(a) of the Civil Service Law.

CWA, which represents Principal Administrative Associates in the Office of operations, does not object to



this portion of the City's petition. It concedes that Operations is part of the Executive office of the Mayor and that all employees therein represented by CWA are managerial or confidential. This stipulation is based upon the understanding that all computer operations have been removed from the Office of operations.

CSBA, which represents an attorney employed in Operations, maintains that the Office of operations is not inherently managerial or confidential since it is not engaged in personnel, labor relations or budgetary functions at a level which would warrant exclusion of its employees from collective bargaining. CSBA also asserts that the duties performed by the employee it represents are within the job specification for that title, which has been deemed eligible for collective bargaining.

We are persuaded that the work of the Office of Operations is inherently managerial and/or confidential and shall, therefore, direct that all employees of this office be excluded from collective bargaining. We note that the Office of operations was created with the specific purpose of enhancing executive management in the area of operations.<sup>15</sup> Moreover, the mandate of the Director of Operations includes the formulation of executive policy concerning personnel management, enhancement of productivity, and reduction of

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<sup>15</sup> E.O. 75, ¶¶2-3.

operating expenses, all of which involve and affect labor relations and personnel administration on a citywide basis. We also note that the Director of Operations is a member of the Mayor's Policy Committee.<sup>16</sup>

In reaching the conclusion that the Office of Operations formulates and administers executive and management policy and that the work of its employees is inherently managerial and/or confidential, we also rely upon the following uncontested facts:

1. The Office of Operations is the successor to OMB with respect to its management functions. In our Decision 11-76, we determined that all employees in the Bureau of the Budget, the predecessor to OMB, were managerial and/or confidential;
2. The Office of operations, together with OMB, analyzes budget requests from the agencies, determines performance standards and monitors agency compliance with established performance goals;
3. All employees of Operations are involved in the preparation of the Mayor's Management Report which gives them access to data relating to agency budgets, performance goals and personnel which is considered confidential until it is officially released.<sup>17</sup>

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<sup>16</sup> E.O. 75 §4.

<sup>17</sup> In Decision 32-82, we accepted the Trial Examiner's conclusion that mere access by employees of the Financial Information Services Agency (FISA) to confidential information in the preparation of the City's budget did not justify a finding of confidential status within the meaning of CSL section 201.7. In the instant case, however, it is clear that access to budget information is in the context of assessment and evaluation of agency performance and productivity and bears a relationship to labor relations and personnel matters.

We emphasize that our decision herein, like Decisions 75-74 (OMLR and OCB), 11-76 (OMB) and 19-75 (Executive Management and Executive and Administrative Services Sections of the Mayor's Office), is based upon the functions of the Office of Operations as a whole and not upon the functions performed by individual employees.

Bureau of Labor Services

Executive Order 50 (E.O. 50) of 1980 has as its stated purpose:

"to ensure compliance with the equal employment opportunity requirements of City, State and Federal law in City contracting."<sup>18</sup>

The Bureau of Labor Services (BLS or the Bureau) is given the following responsibilities:

- (a) To implement, monitor compliance with, and enforce this order and programs established pursuant to City, State and Federal law requiring contractors to provide equal employment opportunity;
- (b) To implement, monitor compliance with, and enforce on-the-job training requirements on construction projects;
- (c) To monitor compliance by contractors with State and Federal prevailing wage requirements where required;
- (d) To advise and assist contractors and labor unions with respect to their obligations to provide equal employment opportunity;

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<sup>18</sup> E.O. 50 §1 (1980).

- (e) to advise and assist persons in the private sector with respect to employment problems;
- (f) To establish advisory committees, including representatives of employers, labor unions, community organizations and others concerned with the enforcement of this order; and
- (g) To serve as the City's principal liaison to Federal, State and local contract compliance agencies.<sup>19</sup>

The Bureau is also responsible for the review and acceptance of employment reports which must be submitted by outside contractors as a condition precedent to the conclusion of a contract for services, supplies, or equipment with the City.<sup>20</sup> BLS employees investigate and hold hearings to determine whether a contractor is in compliance with equal opportunity requirements.<sup>21</sup> The Bureau also is authorized to impose sanctions for non-compliance, including disapproval of a proposed contract or termination of an existing contract.<sup>22</sup>

OMLR argues that BLS is centrally involved in executive policy formulation because of its broad powers under E.O. 50 and its control over equal employment opportunity enforcement in contracts between the City and private sector entities. OMLR asserts that, upon request, BLS also assists in the resolution of private sector labor-management disputes. For these reasons, the City argues, all Bureau employees should be designated managerial or confidential.

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<sup>19</sup> E.O. 50 §4.

<sup>20</sup> E.O. 50 §6.

<sup>21</sup> E.O. 50 §8.

<sup>22</sup> E.O. 50 §9.

We are not so persuaded. As D.C. 37 notes, the functions performed by BLS do not appear to be the formulation of policy as much as ensuring compliance with existing policy and equal employment opportunity laws. Moreover, as CWA points out, the Bureau does not deal with City employees, who are specifically excluded from the Bureau's jurisdiction,<sup>23</sup> but with employees of private sector entities that have or seek contracts with the City. In this respect, the Bureau is similar to the Labor Law Complaint Section of the Comptroller's office, whose employees prepare surveys of wage rates prevailing in private industry for use by the City Comptroller and craft unions in their negotiations concerning the wages of employees subject to section 220 of the State Labor Law. Since the functions of the Labor Law Complaint Section are directed toward employees whose wages are not negotiated in collective bargaining, we found no conflict in permitting the employees to be represented in collective bargaining with respect to their own wages and working conditions.<sup>24</sup> A similar finding may appropriately be made in the instant case.

Based upon the evidence submitted, we conclude that there is insufficient basis to warrant a finding that the work of BLS is inherently managerial and/or confidential. However, as the City has requested an opportunity to present additional evidence on this point, we shall continue our investigation

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<sup>23</sup> E.O. 50 §3 (c) (ii) (C) .

<sup>24</sup> Decision No. 11-76.

by way of a hearing to be scheduled before a Trial Examiner designated by the office of Collective Bargaining at an early date. The City will, of course, have the burden of going forward and the burden of proof on this issue.

Commission for the United Nations and for the Consular Corps

The Commission for the United Nations and for the Consular Corps was created in order to ensure the "finest possible relationship between the personnel of the United Nations and the various foreign consulates and the people of the City of New York."<sup>25</sup> The Commission's duties include;

- (a) promoting the role of New York City as the headquarters of the United Nations and as one of the main centers of foreign consulates;
- (b) informing United Nations and Consular Corps officials of services available to them from the various City agencies and taking such action as is necessary to assure that such services are rendered;
- (c) mobilizing services for the benefit of officials, delegates and personnel of the United Nations and Consular Corps; and
- (d) mobilizing the assistance of voluntary neighborhood and community organizations for the furtherance of the above purposes.<sup>26</sup>

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<sup>25</sup> E.O. 7 (1970).

<sup>26</sup> See E.O. 7 §3.

The Commission acts as a liaison between the Mayor and the diplomatic community. Its employees deal, on a daily basis, with highly placed officials of Federal, State and City governments, foreign officials and United Nations personnel, and are involved in studying the effect of the diplomatic community on the economic and social welfare of the City preparing resolutions on behalf of the Mayor to be submitted to the City Council, and conferring with other City agencies to develop policies on housing, community relations and education affecting the diplomatic community. The Commission also advises City agencies on legal and policy questions relating to the diplomatic community.

As the parties having an interest in the status of the U.N. Commission, namely, the City, D.C. 37 and CWA, have stipulated and agreed that all employees in the Commission are managerial or confidential pursuant to section 1173-4.1 of the NYCCBL, we make no finding with respect to this office but shall, in accordance with the stipulation, exclude all Commission employees from collective bargaining.

Commission on the Status of Women, Office for the Handicapped, Voluntary Action Center, Juvenile Justice Information System, Adult Justice Information System, Arson Task Force, Midtown Enforcement Project, Office of Single Room Occupancy Housing

Examination of the City's petition and supporting documents concerning the managerial or confidential status of employees in the remaining sections of the Mayor's Office

that are subject to the petition leads us to conclude that there is no basis for excluding from collective bargaining all employees of these sections. The evidence reveals the following with respect to these offices.

The Commission on the Status of Women was created in order to implement the stated policy of the City to ensure for women of the City freedom from discrimination based upon sex, to assure them the benefits of equal opportunity and to promote the economic and social well-being of women.<sup>27</sup> The Commission is specifically mandated to:

- (a) study and analyze the nature and extent of discrimination against women in the City of New York;
- (b) provide data needed by the Office of the Mayor with a view toward bringing about equitable institutional changes; and
- (c) make recommendations to the Mayor for legislative or executive action to eliminate discrimination against women and to ensure equal opportunity.<sup>28</sup>

The Commission's activities have been primarily in the legislative arena. Its employees develop positions and propose legislation concerning a broad range of issues affecting women, including employment, housing, education and health.

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<sup>27</sup> E.O. 28 (1975).

<sup>28</sup> E.O. 28 §2.



They also testify at public hearings and comment upon proposed changes in agency rules and regulations.

The Office for the Handicapped serves as public spokesman for the needs and aspirations of the handicapped; coordinates, analyzes, develops and locates funding for City programs for the handicapped; compiles data on the number of handicapped persons in the City in order to determine their needs; and proposes legislation.<sup>29</sup>

The Mayor's Voluntary Action Center oversees the use of volunteers by the City of New York. It serves as a clearinghouse for volunteer activities and information, seeks to promote voluntarism, and assists City agencies to upgrade volunteer assignments within City government.

The Juvenile Justice Information System (JJIS), Adult Justice Information System (AJIS) and Arson Task Force fall under the aegis of the Office of the Coordinator of Criminal Justice. This "parent agency" is responsible for advising the Mayor concerning coordination of criminal justice activities under the jurisdiction of the Mayor. It also reviews agency budget requests for programs relating to criminal justice, oversees and reviews such programs, proposes legislation relating to criminal justice needs and develops management information systems to facilitate the work of the Coordinator's office. The JJIS and AJIS are examples of

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<sup>29</sup> E.O. 81 §2 (1973).

management information systems.

JJIS maintains a data base containing arrest records, intake data and disposition of cases processed in Family Court. AJIS performs a similar function for adult criminal cases. Both of these offices facilitate the retrieval of data and therefore contribute to overall management in the criminal justice area.

The Arson Task Force makes recommendations to the Mayor concerning arson prevention and the investigation and prosecution of arson cases. Task Force members represent the Mayor at public hearings on the subject of arson; they propose and draft legislation; they prepare reports for the Mayor and the City Council on the work of the Task Force.

The Midtown Enforcement Project, a multi-agency task force,<sup>30</sup> was established with a view to preventing further physical, social and economic deterioration of the Times Square area by identifying, investigating and aiding in the prosecution of illegal activities. The Midtown Enforcement legal staff brings civil actions to enforce zoning regulations and develops legislation to address specific problems. Midtown's inspection staff ensures code compliance and identifies "nuisance premises". In conjunction with other City agencies and citizens' groups, Midtown Enforcement develops new strategies and programs which will aid in revitalizing

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<sup>30</sup> The task force consists of representatives from the Health, Fire, Buildings and Police Departments of the City of New York.

the Times Square area and enhance the economic and social viability of the midtown area.

The Office of Single Room Occupancy Housing coordinates the City's efforts to protect the rights of tenants in single room occupancy facilities. It develops programs to improve living conditions in such facilities and monitors the work of City agencies that provide health care, housing maintenance and social services to the SRO population. It also advocates protective legislation.

We note that the above-described offices play an important role in furthering the goals of the mayoralty in their respective substantive areas. They serve as liaisons between the Mayor and segments of the New York City community that have been deemed to merit particular attention because of the status or needs of these groups (e.g., women, the handicapped, single room occupancy housing tenants). These offices coordinate the efforts of various municipal agencies that operate independently of one another but toward a common end in such areas as crime control or the use of volunteers. They also serve an important function by maintaining a visible government presence in areas of particular concern to the community.

In spite of their important functions and organizational proximity to the Mayor, however, we conclude that

none of the above-listed sections of the Mayor's Office is inherently managerial and/or confidential. Rather, the evidence submitted shows that employees in these offices, inter alia, collect data for use in developing policy proposals, propose and draft legislation, and perform monitoring and reporting functions. They do not formulate policy or perform any labor relations or personnel function which would warrant their exclusion from collective bargaining under section 201.7(a) of the Taylor Law.

PERB has specifically stated that "formulation of policy"

would not appear to include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal (emphasis added).<sup>31</sup>

In our Decision No. 69-68,<sup>32</sup> where this Board found that persons employed as Principal Statisticians were not managerial employees, we explained:

That they may supply information used in the formulation of policy by higher personnel, or analyze and interpret the results of research in relation to overall policy, does not constitute them managerial-executives (citations omitted).

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<sup>31</sup> Matter of State of New York, 5 PERB ¶3001 at 3005 (1972).

<sup>32</sup> Association of Municipal Statisticians and the City of New York. See also Decision 33-78.

Formulation of policy as a criterion for the designation of employees as managerial has been held to require, as a minimum,

regular participation in the essential process which results in a policy proposal and the decision to put such a proposal into effect.<sup>33</sup>

Moreover, while policymakers need not be involved in labor relations, as is the case with employees excluded from collective bargaining under the other three Taylor Law criteria for designation as managerial,<sup>34</sup> this Board has consistently emphasized the direct relationship between the policy being formulated and the conduct of municipal labor relations, including personnel and budgetary matters, whenever it has found an entire agency or organizational segment of an agency "inherently managerial and/or confidential".<sup>35</sup>

In the instant matter, there is no evidence that the involvement in policy formulation of the employees in the subject sections of the Mayor's Office, to the extent that they may be so involved, is related to or affects municipal labor relations, budget or personnel matters. Moreover, there is no evidence that such involvement is at a level of sufficient responsibility to warrant exclusion

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<sup>33</sup> Matter of State of New York, 5 PERB ¶3001 at 3005 (1972); See, City of Binghamton, 12 PERB ¶3099 (1979); Decision 32-82.

<sup>34</sup> Matter of State of New York, supra; Decision 32-82.

<sup>35</sup> Decisions 75-74; 19-75; 11-76.

from collective bargaining based upon the individual duties and functions of such employees. While we do not doubt that these employees perform important, even sensitive, work close to a policymaking level of City government, this is an insufficient basis for depriving them of the rights guaranteed by section 1173-4.1 of our statute.

Nevertheless, we note that each of the above-described offices also includes one or more employees who have been designated managerial and whose status is not at issue in this proceeding.<sup>36</sup> In each such section, the highest level managerial employees necessarily are concerned with labor relations, personnel and budgetary matters affecting that office and may be aided in the performance of managerial duties by one or more employees who, because of their relationship to said manager, should be designated confidential. Accordingly, we are prepared to exclude from our holding herein as many as two employees in each section found not inherently managerial and/or confidential.<sup>37</sup> These employees, to be identified by the City, shall be designated confidential and shall be removed from their respective collective bargaining units.

In order to implement the foregoing decision, we

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<sup>36</sup> Appendix to City's amended petition.

<sup>37</sup> Such exclusions shall not, however, be made with respect to the Bureau of Labor Services, which will be the subject of further proceedings.

shall require that the City identify, within 15 days of receipt of this decision, the employees it deems confidential. Notice of such designations shall be filed with this Board and served on each employee concerned and on the union certified to represent each such employee. Objections, if any, to the City's designations may be served and filed by the affected employees and/or by their union representatives within 10 days of service upon them of notice of the designation. Any such objection shall form the basis for further investigation by this Board concerning the confidential status of such designated employee.

Finally, we emphasize that nothing herein shall be read to preclude the City from filing a new petition seeking a determination that other individuals employed in any of the named sections of the Mayor's Office are managerial or confidential based upon their specific duties and responsibilities.<sup>38</sup>

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<sup>38</sup> See, Revised Consolidated Rules of the Office of Collective Bargaining §2.20(b)(3).

O R D E R

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, and in contemplation of section 1173-4.1 of that Law and sections 201.7(a) and 214 of the New York State Civil Service Law, it is hereby

DETERMINED, that the Mayor's Office of Operations is inherently managerial and/or confidential; and it is further

DETERMINED, that the employees of the New York City Commission for the United Nations and for the Consular Corps shall be deemed managerial and/or confidential, in accordance with the stipulation of the interested parties; and it is further

DETERMINED, that the Commission on the Status of Women, Office for the Handicapped, Voluntary Action Center, Juvenile Justice Information System, Adult Justice Information System, Arson Task Force, Midtown Enforcement Project, and Office of Single Room Occupancy Housing are not inherently managerial and/or confidential; and it is hereby

ORDERED, that so much of the City's petition as requests a finding by this Board that all employees of the



Office of Operations, are ineligible for collective bargaining be, and the same hereby is, granted; and it is further

ORDERED, that so much of the City's petition as requests a finding by this Board that the Bureau of Labor Services is inherently managerial and/or confidential be, and the same hereby is, severed, and referred to hearing before the OCB-designated Trial Examiner; and it is further

ORDERED, that so much of the City's petition as requests a finding by this Board that all employees of the Commission on the Status of Women, office for the Handicapped, Voluntary Action Center, Juvenile Justice Information System, Adult Justice Information System and Arson Task Force, Midtown Enforcement Project, and Office of Single Room Occupancy Housing, are ineligible for collective bargaining be, and the same hereby is, denied; and it is further

DIRECTED, that the City of New York may identify no more than two individuals in each of the offices named in the third decretal paragraph of this order to be designated as confidential, and that it shall serve and file notice of its designations in the manner, prescribed in our decision herein no later than 15 days following receipt of this decision; and it is further

DIRECTED, that the union certified to represent an employee designated confidential in accordance with this decision, and/or any employee so designated, shall, within 10 days of notification of such designation, serve and file an objection, if any, to such designation, such objection to form the basis for an investigation by this Board into the alleged confidential status of such designated employee.

DATED:       New York, N.Y.  
              June 13, 1984

ARVID ANDERSON  
CHAIRMAN

MILTON FRIEDMAN  
MEMBER

DANIEL G. COLLINS  
MEMBER