

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,

-and-

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

Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1180,

Petitioner,

-and-

ORGANIZATION OF STAFF ANALYSTS,

Intervenor,

-and-

THE CITY OF NEW YORK,

Respondent.

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DECISION NO. 21-87

DOCKET NOS. RU-521-75

RU-833-75

RU-702-79

RU-704-79

RU-707-79

RU-730-79

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DECISION AND ORDER

This proceeding concerns petitions filed by four unions, and the intervention of a fifth union,¹ all seeking to represent for purposes of collective bargaining employees working in the Staff Analyst series of titles (Staff Analyst, Associate Staff Analyst and Administrative Staff Analyst). The City of New York, appearing by its office of Municipal Labor Relations, ("The City" or "OMLR") objected to the petitions shortly after they were filed, arguing that the employees are managerial or confidential within the meaning of the New York City Collective Bargaining Law (NYCCBL) and, therefore, excluded from collective bargaining. The Board of Certification ("the Board") thereafter began an investigation of the unions' request to represent Staff Analysts and the City's objection thereto. The Board has issued six interim decisions in this matter to date. In Decision Nos. 39-80 and 20-82, the Board determined that the City had established a prima facie case

¹ The Organization of Staff Analysts ("OSA") previously affiliated with Local 237, IBT, voted to disaffiliate from that Union on October 11, 1983. OSA thereafter filed a motion to intervene in the representation case. Upon receipt of sufficient evidence that OSA is a bona fide organization, as well as a no-strike affirmation and an adequate showing of interest in the proposed bargaining unit of Staff Analysts and Associate Staff Analysts, in March 1984 we granted the motion to intervene and substituted OSA for Local 237, IBT in these proceedings.

as to the managerial and/or confidential status of

1. employees serving in the title Administrative Staff Analyst;
2. employees serving in the titles Staff Analyst and Associate Staff Analyst who, prior to their reclassification to the Staff Analyst series, had been excluded from collective bargaining by a decision of the Board finding their predecessor titles to be managerial or confidential, if such employees continue to perform the duties of their predecessor titles; also, the successors to employees who held such previously excluded titles;
3. employees serving in the title Associate Staff Analyst who perform duties in the areas of personnel administration, labor relations or budget, who are paid at a rate equal to or in excess of the minimum pay level for employees in the Managerial Pay Plan. These employees were found to be prima facie managerial;
4. employees serving in the title Associate Staff Analyst who perform duties in the areas of personnel administration, labor relations or budget, who are paid at a rate less than the minimum pay level for employees in the Managerial Pay Plan. These employees were found to be prima facie confidential, subject to the condition that the City provide the names of the managerial employees with whom these employees have a confidential relationship;

5. employees serving in the title Staff Analyst who perform duties in the areas of personnel administration, labor relations or budget. These employees also were designated

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prima facie confidential, subject to the condition that the City provide the names of the managerial employees with whom these employees have a confidential relationship. ²

In Decision No. 20-82, the Board also determined that the City had the burden of producing additional evidence and argument in support of its claim with respect to Staff and Associate Staff Analysts who were not within the categories of its prima facie case. ³

² OSA subsequently challenged the Board's interim findings. In Decision No. 21-84, the Board confirmed its interim findings, but deferred decision on the status of those Staff and Associate Staff Analysts who were the subject of the rebuttal case presented by OSA between May 9 and October 4, 1984. Thereafter, in Decision No. 5-85, the Board determined that 45 of the Staff and Associate Staff Analysts challenged by OSA were managerial or confidential and declared ineligible for collective bargaining; 39 were not managerial or confidential and declared eligible for collective bargaining.

³ Charged with preparing to go forward with the remainder of its affirmative case, the City proposed to have the New York City Director of Personnel conduct desk audits of the estimated 600 Staff and Associate Staff Analyst positions not covered by the interim decisions. Upon the completion of the desk audits, the City stated that it is its position that those desk audited employees who are performing duties appropriate to the Staff or Associate Staff Analyst titles are managerial and/or confidential, and offered to submit those desk audits into evidence. OSA asserted that while some of the desk audits accurately reflect the duties performed by the employees involved, and that it was prepared to submit those audits to the Board for a determination of manageriality and/or confidentiality, many, if not most, of the audits do not reflect the subject employees' duties accurately. Thus, OSA strenuously objected to any procedure that would enable the City to establish its prima facie case simply by offering into evidence the disputed desk audits. Thereafter, the City

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Hearings to determine the public employee status of those Staff and Associate Staff Analysts commenced on May 21, 1985 and continued on a weekly basis until the parties entered into settlement discussions in the fall of 1986. Before the settlement discussions commenced, however, the Board issued Decision Nos. 8-86 and 14-86. In Decision 8-86, the Board reviewed the testimony of more than 230 Staff and Associate Staff Analysts; and determined that 131 of those employees are not managerial or confidential and, therefore are eligible for collective bargaining. In Decision No. 14- 86, the Board reviewed the testimony of 120 Staff and Associate Staff Analysts; and determined that 88 of those employees are not managerial or confidential and, therefore, are eligible for collective bargaining. Thus, at the present time, approximately 369 Staff and Associate Staff Analysts have been found eligible for collective bargaining.⁴

After Decision No. 14-86 was issued by the Board, OSA requested that a hearing be held to determine the unit

indicated that it would not enter the desk audits into evidence. Instead, the City proposed to present testimony with regard to each of the employees in question. (See, Decision No. 8-86 at pages 4-10.)

⁴ Although a number of hearings were held after the settlement discussions began, the Board has not issued a decision covering the Staff and Associate Staff Analysts who testified at those hearings. The number of Staff and Associate Staff Analysts found eligible for collective bargaining referred to above, includes those employees that the City. conceded were not managerial or confidential in the hearings held after Decision No. 14-86 was issued.

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appropriate for collective bargaining. OSA claimed that while the total number of Staff and Associate Staff Analysts eligible for collective bargaining is not certain, a large number already have been found eligible; and their duties and responsibilities are representative of all of the Staff and Associate Staff Analysts who will soon be found eligible for collective bargaining.

After careful consideration, and based upon the status of the settlement discussions, the Board determined that it would be appropriate to consider the unit determination question before the final number of Staff and Associate Staff Analysts eligible for collective bargaining is decided. Therefore, by letter dated September 10, 1987, Chairman Anderson informed the parties that a unit determination hearing would be held on September 30, 1987; and that "[t]he 369 Staff and Associate Staff Analysts determined to be eligible for collective bargaining in prior Board of Certification decisions will be considered part of the unit which is the subject of the above referenced

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hearing." ⁵

⁵ Section 12-309(b) of the NYCCBL states that the Board shall have the power and duty:

(1) to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service; and sound labor relations

In determining appropriate bargaining units, Section 2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining provides that the Board shall consider, among other factors:

- a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;
- b. The community of interest of the employees;
- c. The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
- d. The effect of the unit on the efficient operation of the public service and sound labor relations;
- e. Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or to the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;
- f. Whether the unit is consistent with the decisions and policies of the board.

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OSA filed a pre-hearing statement of its position on September 28, 1987. A hearing was held on September 30, 1987 before a Hearing officer designated by the Board at which the parties were given a full opportunity to state their positions and present evidence relating to the appropriate bargaining unit for Staff and Associate Staff Analysts. Post-hearing statements and exhibits were filed on or about October 5, 1987 by Communications Workers of America, Local 1180 (CWA); District Council 37 on behalf of its Local 1407 (Local 1407) and Civil Service Technical Guild, Local 375 (Local 375); and Social Service Employees Union, Local 371 (SSEU, Local 371).

POSITIONS OF THE PARTIES

OSA's Position

OSA claims that the only appropriate bargaining unit is a separate unit of Staff and Associate Staff Analysts. OSA contends that a separate unit will assure the employees the fullest freedom in the exercise of their statutory rights. Accretion of Staff Analysts and Associate Staff Analysts to an existing bargaining unit without any showing of interest, on the other hand, will ignore completely the

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statutory rights of the employees.

In support of its position, OSA points out that it is the only union in this proceeding that was required to and did submit a showing of interest in the form of designation cards signed by more than 30% of the employees in the "residual unit".⁶ OSA claims that even without a bargaining certificate, it has initiated numerous legal and administrative proceedings and has represented individual Staff and Associate Staff Analysts in grievances and in negotiating transfers between agencies. OSA maintains that as a result of its activities on behalf of Staff Analysts, it is "de facto recognized" by a number of agencies as their representative.

OSA asserts that the evidence does not support the positions of the other unions. According to OSA, very few of the Staff and Associate Staff Analysts who testified perform work similar to accountants, caseworkers, engineers or principal administrative associates. Rather, the

⁶ The residual unit refers to employees in the Staff Analyst title that were not excluded from collective bargaining by the Board in Decision Nos. 39-80 and 20-82.

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evidence shows that the vast majority of employees perform the work listed on the job specifications for the Staff and Associate Staff Analyst titles. OSA contends that if Staff Analysts were accreted to another bargaining unit, their demonstrated interests would be submerged completely by the other employees in the unit and, thus, would negate their right to organize and bargain collectively through their freely chosen representative.

OSA also argues that there is a strong community of interest among Staff and Associate Staff Analysts which requires a determination by the Board that a separate unit is the only appropriate bargaining unit. OSA notes that immediately after the reclassification of titles in 1977, which resulted in the creation of the Staff Analyst series of titles, its organization was founded. OSA maintains that if Staff Analysts' community of interest was with another group of employees, they would not have found it necessary to form their own organization. Instead, they would have sought to be part of some other union.

OSA claims that the strong community of interest among Staff and Associate Staff Analysts is further evidenced by

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the fact that they have similar skills and training, perform similar work, and are part of a direct line of promotion from entry level Staff Analyst to Associate Staff Analyst to Administrative Staff Analyst. The other unions, OSA asserts, have not presented any evidence to support their contention that Staff Analysts have a community of interest with the employees in the units they represent.

OSA contends that it is not the intent of the NYCCBL to force a large group of employees "who have demonstrated a close community of interest and an enduring solidarity, into other existing units against their will, simply to avoid the creation of another unit." It is significant, according to OSA, that in Board of Education of the City of New York and Communication Workers of America and Organization of Staff Analysts, 18 PERB Paragraph 3000.23 (July 19, 1985), PERB recognized the appropriateness of a separate unit of Staff and Associate Staff Analysts even though there were only 25 employees in the Board of Education unit. It is also significant, OSA asserts, that PERB did not consider accreting Staff Analysts to the Education Analysts unit, even though the duties and responsibilities of Education Analysts are closer to Staff

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and Associate Staff Analysts than are the duties and responsibilities of the employees represented by petitioner unions.

In addition, OSA claims that a separate unit would not interfere with the efficient operation of the public service and sound labor relations. OSA acknowledges that throughout its history the Board has sought to reduce the total number of bargaining units and, therefore, has denied many petitions requesting a separate unit. OSA submits, however, that the facts in the case herein distinguish it from those decisions. First, OSA argues that in most of those cases the request for a separate unit involved a small number of employees, usually less than 100. In the instant case, 369 Staff and Associate Staff Analysts already have been found eligible for collective bargaining; and the total number is expected to rise to a minimum of 650. Moreover, OSA notes that in some cases the Board has found a separate unit appropriate even though the unit consisted of a small number of employees, i.e., Chaplains.

Second, OSA argues that the instant case is distinguishable from prior Board decisions because it is not seeking to sever a title from an existing unit; but rather, to be certified as a separate unit. OSA claims

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that in a number of decisions the Board stated that it might have found a separate unit appropriate if it were writing on a "clean slate." In the instant case, OSA asserts, the Board is writing on a "clean slate."

OSA maintains that no evidence has been presented to show that a separate unit of Staff and Associate Staff Analysts would have a deleterious effect on the efficient operations of the public service and sound labor relations. To the contrary, OSA claims that "the evidence in this case, and the history of the proceedings, indicate that a separate unit of analysts would have a positive effect on the efficient operation of the public service and on sound labor relations simply because this is what the [A]nalysts want, and a denial of their rights to collective bargaining, after so many years of effort and determination to achieve it, would promote such discontent and be such a blow to the morale of the [A]nalysts that it could not help but affect the efficient operation of the public service and interfere with sound labor relations."

Finally, OSA claims that the requirement that the officials of government at the level of the unit have the power to negotiate with respect to the terms and conditions

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of employment is clearly satisfied since it is seeking a City-wide unit of Staff and Associate Staff Analysts. Thus, considering all of the evidence, OSA contends that the only appropriate unit is a separate unit of Staff and Associate Staff Analysts.

OSA contends that the arguments for accretion presented by the other parties are not convincing. First, OSA objects to the standing of Locals 1407 and 371 to proceed in this case in their own names.⁷ OSA asserts that Locals 1407 and 371 cannot be separate parties in this proceeding because they do not hold their own collective bargaining certificates and, therefore, have no unit to which Staff and Associate Staff Analysts may be accreted. OSA states, however, that it will withdraw its objection if Locals 1407 and 371 amend their positions to reflect the fact that it is the position of District Council 37.

Second, OSA argues that SSEU, Local 371's position, to accrete only those Staff and Associate Staff Analysts in

⁷ Since Civil Service Technical Guild, Local 375 holds its own collective bargaining certificate, OSA did not object to its standing in this proceeding.

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HRA to SSEU, Local 371, is contrary to the Board's policy because it would result in different treatment for employees in a City-wide title. Moreover, since the officials of HRA do not have the power to negotiate with respect to wages and other terms and conditions of employment, OSA claims that SSEU, Local 371's position does not meet all of the criteria considered by the Board in determining appropriate bargaining units.

Third, even assuming arguendo that accretion is appropriate, OSA claims that the position of Locals 1407, 375 and SSEU, Local 371 is defective. OSA maintains that an election to determine which of these units Staff and Associate Staff Analysts want to represent them would not be democratic unless CWA was also on the ballot.

Fourth, OSA disputes CWA's contention that massive numbers of employees represented by CWA perform precisely the same kind of work as Staff and Associate Staff Analysts found eligible for collective bargaining. OSA recognizes that there is some overlap between the salary and duties performed by Staff Analysts and the salary and duties performed by Principal Administrative Associates. OSA argues, however, that this is true in many titles throughout the City.

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CWA's POSITION

It is the position of CWA that all Staff and Associate Staff Analysts found eligible for collective bargaining should be accreted to its unit, which consists of approximately 7,500 employees in the title, among others, Principal Administrative Associate (PAA). CWA claims that Staff and Associate Staff Analysts who have been found eligible for collective bargaining, and who will be found eligible for collective bargaining, share a community of interest with the employees in the unit it represents. In fact, according to CWA, "one would be astounded to find a virtually direct overlay of duties and responsibilities." In support of this contention, CWA compared the testimony of a Staff Analyst found eligible for collective bargaining in Decision No. 14-86 and the testimony of a PAA in an unrelated representation matter. CWA claims that the evidence shows that both employees, although in different titles, perform precisely the same kind of work. Furthermore, CWA notes that the salary schedules of Staff and Associate Staff Analysts overlap with the salary schedules of the employees in the unit it represents. Since it represents a "cross-occupational group" of employees who, like Staff and Associate Staff Analysts, are employed in virtually every City agency, CWA maintains that

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"[t]here is little question but that the Staff Analyst group would fit neatly within the bargaining unit [it represents]."

CWA also contends that the accretion of Staff and Associate Staff Analysts to its unit would comply with the Board's long-standing policy of creating large bargaining units based on broad occupational groupings comprising as many employees and titles as can effectively operate as an entity. CWA disputes OSA's contention that PERB's decision, concerning Staff and Associate Staff Analysts at the Board of Education, is significant in the case herein. CWA asserts that PERB's decision should not be a "guiding factor" for this Board because, as recognized in prior decisions, the problems of the City of New York are different from the problems of other public employers.

Finally, CWA contends that the accretion of Staff and Associate Staff Analysts to its unit would promote the efficient operation of the public service and sound labor relations. In support of this contention, CWA claims that accretion would:

- (1) hold down the number of bargaining units;

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- (2) create a large unit with a clear coincidence of duties and commonality of interests with which the City could negotiate;
- (3) create a large unit in which the employees involved have similar salaries, educational background and perform similar or identical work; and
- (4) facilitate the negotiation of educational programs designed to promote employees within a single bargaining unit to the managerial service.⁸.

District Council 37, Locals 1407, 371 and 375's Position

It is the position of District Council 37 (DC 37) that accretion of Staff and Associate Staff Analysts to Local 1407 or Local 371 or Local 375 is appropriate because there is a close community of interest between Staff Analysts and the employees of these three units. Therefore, DC 37 submits that an election should be held so that Staff and Associate Staff Analysts can decide to which of these units they want to be "accreted." In support of its position, DC 37 claims that this approach, which was adopted by the

⁸ In this regard, CWA notes that the exam given to Associate Staff Analysts and the exams given to PAA IIIs, for promotion to the Administrative Staff Analyst and Administrative Manager titles, respectively, is the same.

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Board in Decision No. 27-80, will best serve the interests of the employees, the Board and the City because it enables Staff and Associate Staff Analysts to exercise their rights under the statute, upholds the Board's long-standing policy of consolidation to avoid a proliferation of bargaining units, and contributes to the efficient operation of the public service and sound labor relations.

DC 37 disputes OSA's contention that the only appropriate bargaining unit is a separate unit of Staff and Associate Staff Analysts. Moreover, DC 37 claims that a recent Board decision presents a "tremendous obstacle" to OSA's request for a separate bargaining unit. In Decision No. 14-87, the Board denied a request by Urban Park Rangers for a separate bargaining unit, finding that they failed to show that their interests have suffered or that their interests would be advanced if they are severed from the unit currently certified to DC 37. That decision is significant, DC 37 maintains, because it indicates that even today the Board is unwilling to depart from its long-standing policy of consolidation.

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DC 37 disputes OSA's contention that if Staff and Associate Staff Analysts are accreted to other units their demonstrated interest as Staff Analysts will be completely submerged. To the contrary, DC 37 asserts that this has not been its experience with other groups of employees. notes that, unlike OSAP it is an a "resource base" of 125,000 members, and, thus, claims that the interests of Staff and Associate Staff Analysts will best be served if they are accreted to one of its units. In addition, DC 37 argues that its approach is more democratic than the "simple accretion" proposed by CWA because it will enable the employees to choose the unit they want to join.

Finally, DC 37 asserts that OSA's objection to the standing of Locals 1407 and 371 as separate parties in this proceeding should be dismissed. DC 37 notes that Locals 1407 and 371 are affiliated with DC 37; and contends that whether Locals 1407 and 371 or DC 37 are listed as petitioners herein is irrelevant. Moreover, DC 37 claims that OSA's objection is untimely. Since this proceeding has been going on for nearly ten years, DC 37 maintains that OSA has waived any right to object to the standing of

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its local unions as parties in this proceeding.

SSEU, Local 371's Position

SSEU,, Local 371 concurs with the position of DC 37, but argues that those Staff and Associate Staff Analysts who work in HRA should be accreted to its bargaining unit. According to SSEU, Local 371, many of the duties and responsibilities now performed by Staff and Associate Staff Analysts in HRA were, prior to the creation of the Staff Analyst series of titles in 1977, performed by the supervisors it represents. Currently, SSEU, Local 371 asserts, Staff and Associate Staff Analysts in HRA and the employees its represents work in similar if not the same jobs, and have similar problems and concern, which are unique to the agency. Because there is a close community of interest between these two groups of employees, and based upon its familiarity with HRA, SSEU, Local 371 contends that it is best equipped to represent Staff and Associate Staff Analysts in HRA. Moreover, SSEU, Local 371 argues that accretion of Staff and Associate Staff Analysts in HRA to its bargaining unit would enable the City to best serve the public in the delivery of social services.

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City's Position

The City took no position concerning the appropriate unit for employees in the titles Staff and Associate Staff Analyst.

DISCUSSION

The question before the Board in the instant case is whether Staff and Associate Staff Analysts should be accreted to an existing unit and, if so, which unit; or whether a separate bargaining unit is appropriate.

In previous decisions, the Board has stated that "Accretion is, in substance, the inclusion in an existing unit of new positions or titles which, because of their similarity or close relationship to the unit titles, would have been included in the original unit if they had been in existence at the time."⁹ In determining whether accretion is appropriate, the Board also has considered the comparative sizes of the two groups.

There is no question that the Staff Analyst title is a new title, and the estimated number of Staff and Associate Staff Analysts eligible for collective bargaining does not pose the problem of "the tail wagging the dog."¹⁰

⁹ Decision No. 39-69.

¹⁰ All of the units to which petitioner unions request accretion of the Staff Analyst title includes substantially more employees than the number of Staff and Associate Staff Analysts sought to be accreted.

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Thus, the only question for determination by the Board is whether there is such a similarity or close relationship to the titles represented by petitioner unions that the Staff Analyst title would have been included in one of these units if it had been in existence at the time the unit was certified.

The evidence presented shows that some Staff and Associate Staff Analysts may be given duties and responsibilities similar to those of PAAs, accountants, engineers or caseworkers. We find, however, that no persuasive evidence has been presented to show that a substantial number of Staff and Associate Staff Analysts regularly perform work similar to that of employees represented by any one of petitioner unions. Instead, as evidenced by the testimony of the numerous Staff and Associate Staff Analysts who testified in the managerial/confidential hearings held in this proceeding, the duties and responsibilities of employees in this title are diverse and often vary depending upon the unit or project to which they are assigned. Thus, while there is some overlap between the duties and responsibilities of Staff and Associate Staff Analysts and the employees represented by each of petitioner unions, the evidence shows that the overlap is neither significant nor consistent enough for the Board to find a similarity or

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close relationship between Staff Analysts and any other title. Rather, given the diversity of duties and responsibilities assigned to Staff Analysts and the variability of their job functions, we find that the only employees with which Staff and Associate Staff Analysts have a similarity or close relationship is other Staff and Associate Staff Analysts. Therefore, we find that accretion of Staff and Associate Staff Analysts to an existing unit is inappropriate. We note that the number of Staff and Associate Staff Analysts eligible for collective bargaining comprises a sufficient number of persons so as to constitute a viable unit.

Contrary to petitioner unions' contention, we find that granting OSA's request for a separate bargaining unit is consistent with the decisions and policies of the Board. As petitioner unions point out the Board has vigorously pursued a policy of consolidation, whenever possible, to avoid a proliferation of bargaining units with which the City must deal. Thus, we have favored the creation of larger units based on broad occupational groups comprising

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as many employees and titles as can effectively operate as an entity. Furthermore, absent extraordinary circumstances, we have consistently denied petitions for a separate unit where granting the petition would require severing a title from an existing unit. As a result, we have successfully reduced the number of bargaining units from 400, which existed at the inception of the OCB, to approximately 80. However, as noted in prior decisions, "The Board will not blindly adhere to its policy of consolidation when the particulars of a given case, measured by the statutory criteria, call for a different result."¹¹

Applying the statutory criteria to the particulars of the case herein, we make the following finding.

¹¹ Decision No. 57-78, See also Decision No. 20-71. In that case, the Board denied a petition to add Chaplains in the Fire Department to a unit consisting of Fire officers. The Board determined that a separate unit consisting of Chaplains employed in all City agencies was a more appropriate unit because they constitute a single civil service title; are professional employees who render the same basic service regardless of the Department in which they are employed; and have the same scope of bargaining.

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As stated previously, the evidence presented shows that Staff and Associate Staff Analysts share the greatest community of interest with other employees in the Staff Analyst titles. They have similar skills, training and educational backgrounds; as well as common problems and concerns that are unique to the title. The fact that the duties, responsibilities and salary of some Staff and Associate Staff Analysts overlap with those of employees in other titles is not by itself a sufficient basis upon which to find a community of interest. As noted by OSA, such an overlap exists in many titles throughout the City. Furthermore, we find that the record in this case does not support CWA's contention that a massive number of the employees it represents perform precisely the same kind of work as Staff and Associate Staff Analysts. Instead, the record shows that some Staff Analysts may perform duties similar to PAAs.

The criterion history of collective bargaining is important in the instant case only insofar as it distinguishes this case from most decisions in which the

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Board denied a request for a separate unit. As noted previously, absent extraordinary circumstances, the Board has been reluctant to grant a request for a separate unit where to do so would require the severance of a title from an existing unit.¹² Since Staff and Associate Staff Analysts are not certified to any unit, granting OSA's request for a separate unit will not result in the fragmentation of an existing unit.

We reject OSA's contention that it has been "de facto recognized " by City agencies as the representative of Staff and Associate Staff Analysts because it represents the title at the Board of Education, has initiated numerous legal and administrative proceedings on behalf of Staff Analysts and, allegedly, has represented individual employees in grievances and in negotiating transfers between agencies. Contrary to OSA's assertion, these

¹² We note that in Decision No. 14-87, cited by DC 37, granting the request for a separate unit consisting of Urban Park Rangers would have required the severance of that title from its existing unit, which is certified to DC 37. Because the facts of that case differ from the facts herein, we reject DC 37's contention that Decision No. 14-87 presents a "tremendous obstacle" to OSA's request for a separate unit.

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factors do not establish a history of collective bargaining. We do find it noteworthy, although not binding upon the decision of this Board, that in the Board of Education case PERB determined that a separate unit of Staff and Associate Staff Analysts is an appropriate bargaining unit.

Finally, we see no ill effects on the "efficient operation of the public service and sound labor relations" in determining that the appropriate unit is a separate unit consisting of Staff and Associate Staff Analysts. We note that the Staff Analyst title is a City-wide title; Staff and Associate Staff Analysts are employed in virtually every City agency. A separate unit of all Staff and Associate Staff Analysts eligible for collective Bargaining will enable the City to deal with one union representing a large number of employees - estimated at 650. In addition, unlike the position argued by SSEU, Local 371, a separate unit consisting of all Staff and Associate Staff Analysts in City agencies will ensure that "the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with

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respect to the terms and conditions of employment which are the subject of collective bargaining. To accrete Staff and Associate Staff Analysts only in HRA to SSEU, Local 371, the position argued by SSEU, Local 371, would result in the "splitting" of the title based upon agency lines in violation of the principles of the NYCCBL and the policies of the Board.¹³

Based upon all of the evidence and arguments presented, and the extensive record in this case, we find that a separate unit consisting of Staff and Associate Staff Analysts is the most appropriate bargaining unit.

We note that the record in this case does not contain conclusive evidence of the desires of the employees as to the preferred bargaining representative. The NYCCBL assures

¹³ Although reluctant to do so, the Board has "split" titles when the circumstances warranted such action. In prior decisions, the Board has split titles along vertical lines (e.g., placing employees at Level I of the title in one bargaining unit and employees at Level II of the title in another bargaining unit) or, as in the instant case, by certifying some employees in a title for collective bargaining while excluding other employees in the same title as managerial or confidential.

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public employees the fullest freedom of exercising their right of self-organization and authorizes the Board to conduct elections to determine the majority representative in an appropriate unit. Therefore, pursuant to the powers granted under the NYCCBL, we will direct an election among employees in the title who are eligible to bargain collectively to determine the majority representative in the unit. Since OSA has submitted a showing of interest in the form of designation cards signed by more than 30% of the estimated 600 Staff and Associate Staff Analysts in the residual unit, we will permit it to be on the ballot. Petitioner unions will have 30 days from receipt of this decision to submit a 10% showing of interest;¹⁴ whereupon they also will be permitted to be on the ballot.¹⁵

¹⁴ Because OSAIS 1984 showing of interest, which was a condition precedent to its intervention in this proceeding, was based upon 30% of the residual unit, which then, as now, included approximately 600 Staff and Associate Staff Analysts, petitioner unions are required to submit at least 60 designation cards for the Board to find a 10% showing of interest.

¹⁵ In light of our decision finding a separate unit of Staff and Associate Staff Analysts appropriate, we do not find it necessary to rule on OSA's objection to the standing of Local 1407 and SSEU, Local 371 to proceed in this case in their own names. We do note, however, that Local 1407 and SSEU, Local 371 do not independently hold their own collective bargaining certificates. Therefore, it is, respectively DC 37 and SSEU, Local 371 or DC 37 and Local 1407 jointly which must submit a 10% showing of interest to be on the ballot.

We anticipate that prior to the time at which an election would in the normal course be held, there will have been a resolution of the eligibility of the great majority of Staff and Associate Staff Analysts whose status is still pending.

ORDER AND DIRECTION OF AN ELECTION

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

ORDERED, that the petitions for accretion of the Communications Workers of America, Local 1180; Local 1407, District Council 37; Civil Service Technical Guild, Local 375, District Council 37; and Social Service Employees Union, Local 371, District Council 37, be and the same hereby are, denied, and it is further

ORDERED, that the request for a separate unit of the Organization of Staff Analysts be, and the same hereby is, granted, and, it is further

DIRECTED, that an election by secret ballot shall be conducted under the supervision of the Board of Certification, or its agents, at a time, place and during hours to be fixed by the Board among all Staff and Associate Staff Analysts eligible for collective bargaining employed by the City of New York and related public employers subject to the jurisdiction of the Board of Certification to determine whether or not they desire to be represented for the purposes of collective bargaining by the Organization of Staff Analysts, or any other public employee organization which files a showing of interest, consisting of ten (10) percent of the employees in the title who are eligible for collective bargaining, within thirty (30) days from the date of service of this Direction of Election, or none of said organizations.

DATED: New York, N.Y.
October 26, 1987

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER