CWA v. HHC,40 OCB 5 (BOC 1987) [5-87 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
- - - - - - - - - - - - - - - - - - - X
In the Matter of the Petition of

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Petitioner,

DECISION NO. 5-87

DOCKET NO. RU-953-86

-and-

THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Respondent.
- - - - - - - - - - - - - - - - - - - X

INTERIM DECISION AND ORDER

A petition for certification was filed by Communications Workers of America, AFL-CIO (hereinafter "CWA" or "the Union") on January 30, 1986, in which the Union sought certification to represent employees in the titles Assistant Coordinating Manager and Coordinating Manager employed by the New York City Health and Hospitals Corporation (hereinafter "HHC"). CWA requested that the employees in these titles be added to an existing bargaining unit for which the Union is the certified representative.[1]

Initally, the employer did not submit a response to CWA's petition, pending settlement of a related

[1] Certification No. 41-73 (as amended), covering nearly six thousand employees in twenty-one "administrative and related" titles, including Principal Administrative Associate.

improper practice proceeding.[2] Pursuant to a stipulation of settlement executed by the parties and submitted to the office of Collective Bargaining (hereinafter "OCB") on May 22, 1986, it was agreed that CWA would withdraw its improper practice charge and would proceed with its petition for certification in the instant matter. It was further agreed that the employer would oppose the petition herein on the grounds that the titles sought to be accreted by CWA are appropriately designated managerial and/or confidential. It was also agreed that to the extent the Board of Certification may determine that any of the employees in the titles in question are eligible for collective bargaining, the employer will not oppose their accretion to the bargaining unit proposed by the Union.

Following a preliminary investigation by the Director of Representation, this matter was assigned to a Trial Examiner for the purpose of conducting hearings on the managerial/confidential question. At a pre-hearing conference held by the Trial Examiner on October 24, 1986, the attorney for HHC raised certain questions concerning the standard of manageriality to be applied

[2] Docket No. BCB-838-85.

by the Board, and the burden of going forward in the hearings. These issues were presented in greater detail in a letter from HHC to the Board's Chairman, dated November 17, 1986. When these questions could not be resolved informally, the parties were informed by the Trial Examiner of a schedule for the filing of a formal motion and response, and of the fact that hearings would be held in abeyance pending determination of the motion. HHC filed the motion which is the subject of this interim decision on December 10, 1986. CWA submitted its opposing papers and memorandum of law on December 18, 1986.

HHC's Motion

HHC requests an order of the Board holding that: (a) the criteria used for determining manageriality shall include all of the provisions of HHCIs enabling legislation, and particularly Unconsolidated Laws §7385-11; and (b) the presumption of eligibility for collective bargaining for the titles in question has been rebutted sufficiently to shift the burden of proof to the petitioning union.

Positions of the Parties

HHC's Position

HHC submits that two threshhold issues must be decided prior to the commencement of hearings. With respect to the first issue, concerning the criteria of manageriality to be applied, HHC contends that two different statutes must be considered: §201, paragraphs 7(a)(i) and (ii) of the Taylor Law,[3] and E.7385, paragraph 11 of the Unconsolidated Laws of New York, which is part of HHC's enabling legislation.[4] These governing statutes provide respectively as follows:

> Taylor Law §201.7(a):
> "... 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."

[3] The Public Employees' Fair Employment Act, commonly referred to as the Taylor Law, is Article 14 of the New York Civil Service Law.

[4] Chapter 5 of Title 18 of the Unconsolidated Laws, §7381, et seq., constitutes the New York City Health and Hospitals Corporation Act.

> Unconsolidated Laws §7385:
> "The corporation shall have the following powers in addition to those specifically conferred elsewhere in this act:
> * * *
> 11. To employ officers, executives, management personnel, and such other employees who formulate or participate in the formulation of the plans, policies, aims, standards, or who administer, manage or operate the corporation and its hospitals or health facilities, or who assist and act in a confidential capacity to persons who are responsible for the formulation, determination and effectuation of management policies concerning personnel or labor relations, or who determine the number of, and appointment and removal of, employees of the corporation, fix their qualification and prescribe their duties and other terms of employment.
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> All such personnel shall be excluded from collective bargaining representation."

HHC notes that in a letter approving passage of HHC's enabling legislation in 1969, then-Governor Rockefeller referred to the "broad powers and operational flexibility of the Corporation." It is HHC's position that the flexibility referred to by the Governor, in conjunction with the specific language of §7385, indicates the intention of the Legislature to create an entity with flexibility in the administration of its hospitals. HHC argues that such flexibility must necessarily include expansive criteria to employ staff excluded from collective bargaining.

HHC recognizes that §7390.5 of the enabling legislation provides, in pertinent part, that:

> "The corporation, its officers and employees, shall be subject to article fourteen of the civil service law and for all such purposes the corporation shall be deemed 'public employees' [sic], provided, however, that chapter fifty-four of the New York City Charter and Administrative Code and Executive Order No. 52 dated September 29, 1967, promulgated by the mayor of the city of New York, shall apply in all respects to the corporation, its officers and employees except that paragraph seven and paragraph eight of said executive order shall not be applicable to the corporation, its officers and employees."

However, HHC asserts that this provision, if interpreted as dispositive of the criteria for manageriality, would directly contradict the criteria enumerated in §7385. Therefore, HHC submits that, consistent with the rules of general statutory construction, all parts of the statute must be harmonized with each other, and effect and meaning given, if possible, to the entire statute and every part and word thereof. It is contended by HHC that a harmonious reading of both relevant provisions of the Unconsolidated Laws would result in the viability of the criteria provided in §7385.11, while concurrently granting the OCB jurisdiction and venue to hear disputes thereunder. The Board of Certification, while sitting

as arbiter of the disputes, should apply HHC's specific criteria as enumerated in §7385.11.

Alternatively, HHC argues that if the Board finds that the Taylor Law criteria are applicable, it should read them together with the provisions of Unconsolidated Law §7385.11. Statutes which relate to the same person or thing or class of persons are said to be in pari materia and are to be construed together. HHC asserts that applying the rule of pari materia to the HHC enabling legislation and the Taylor Law and OCB criteria necessitates a combining of the statutes to include all the provisions enumerated. Accordingly, HHC requests that the Board rule that the applicable criteria of manageriality include the provisions of §7385.11 as well as those other criteria ordinarily utilized by the Board.

Concerning what it characterizes variously as the burden of proof or the burden of going forward, HHC contends that while there exists, under the Taylor Law, a presumption that employees in a title are eligible for collective bargaining, that presumption has been overcome by the circumstances relating to the titles at issue in the present case. HHC alleges that the presumption of eligibility usually concerns newly created titles, whether designated as non-managerial

or managerial and/or confidential by the employer. The presumption must be overcome by the presentation, by the employer, of a prima facie case that the duties and function of the employees in the title are managerial and/or confidential. At that point, asserts HHC, the burden of proof shifts to the employee organization to prove otherwise.

In contrast to the usual case, alleges HHC, the titles in dispute in this proceeding were created years ago: Coordinating Manager in 1979, and Assistant Co-ordinating Manager in 1981. Both were designated by HHC as managerial titles from the dates of their creation. All employees serving in those titles over the years were appointed with the understanding that they were filling managerial lines. HHC submits that since the titles have been functioning as managerial since their inception, a challenge to their manageriality should be held to a greater burden than a challenge to a newly created title. HHC contends that the circumstances of these titles may be analogized to an instance in which there has been a prior Board finding of manageriality. Just as a union, in the latter instance, must show evidence

of changed circumstances to warrant changing the Board's determination, so, in the present case, should the burden be on the CWA to prove that the long established managerial titles in question are eligible for collective bargaining.

Finally, HHC alleges that the accretion sought by CWA in this case does not fall within the traditionally recognized definition of accretion, which is the addition of a relatively small group of employees to an existing unit. Here, according to HHC, the Union represented, as of October 1986, 782 employees employed by HHC in the title of Principal Administrative Associate. At the same time, there were 694 employees in HHC in the Coordinating Manager and Assistant Coordinating Manager titles. HHC states that accretion as requested by the Union would nearly double the size of the present unit in HHC, and the affected employees would be added to the unit without an election. Therefore, HHC submits that CWA not only should bear the burden of proving non-manageriality, but also should be required to prove that it is the proper organization to represent such titles.

CWA's Position

CWA observes that, pursuant to its enabling legislation, HHC has been subject to the jurisdiction of OCB since the Corporation's inception. The Union asserts that the legislative mandate is unequivocal:

> "The corporation, its officers and employees, shall be subject to article fourteen of the civil service law and for all such purposes the corporation shall be deemed 'public employees' [sic], provided, however, that chapter fifty-four of the New York City Charter and Administrative Code and Executive Order No. 52 dated September 29, 1967, promulgated by the Mayor of the City of New York, shall apply in all respects to the corporation, its officers and employees...."
> (Unconsolidated Laws 57390-5).

It is CWA's contention that nothing contained in that section or elsewhere in the statute authorizes the Board of Certification to adopt a separate and unique standard for determining the managerial or confidential status of HHC employees.

The Union points out that the Board has rendered determinations in other cases involving the managerial and/or confidential status of titles utilized in HHC, and in such cases there was no mention of the purported §7385.11 "criteria" for determining manageriality. CWA notes that HHC has failed to cite any Board decisions

affirming the contentions advanced in the present case.

CWA argues that HHC's position necessarily implies that the §7385.11 "criteria" are broader than the Board's traditional standards for determining manageriality, and, thus, that the collective bargaining rights of employees in HHC are more restrictive than those of employees in other public agencies. Such a proposition, submits the Union, must be supported by an affirmative and unequivocal showing by HHC of a sound and persuasive basis for its far-reaching assertion. CWA contends that HHC has failed to make such a showing. CWA alleges that the only evidence submitted by HHC in support of its position is a 1969 message of then-Governor Rockefeller, making, at best, generalized references to the need for "operational flexibility." The Union submits that no discernible evidence of the intent ascribed by HHC to the Governor's message can be adduced.

In support of CWA's position that the Board is bound to apply only the Taylor Law criteria of manageriality,[5] the Union cites the decision of the New York Court of Appeals in the case of Civil Service Technical

[5] Civil Service Law 5201.7(a)

Guild v. Anderson,[6] in which the court, adopting the opinion of the dissenting Justice in the Appellate Division,[7] emphasized that OCB is required to administer the Taylor Law in determining questions of managerial status, and that other guidelines or indicia of manageriality may be used only with constant reference to the Taylor Law criteria and its goals. CWA notes that, significantly, the managerial /confidential petition at issue in the Civil Service Technical Guild case in cluded, inter alia, employees of HHC. The opinion of the court makes no reference to the applicability of §7385.11 "criteria", nor is mention made that employees of HHC do not enjoy the same collective bargaining rights as other public employees. CWA submits that this decision supports its contention that no separate "HHC standard" exists.

In response to HHC's position on the burden of proving managerial and/or confidential status, CWA again refers to the decision in the Civil Service Technical Guild case, in which the court states that,

[6] 55 N.Y. 2d 618, 446 N.Y.S. 2d 264 (1981).

[7] 79 A.D. 2d 541, 542, 434 N.Y.S. 2d 13, 15 (1st Dept. 1980), rev'd 55 N.Y. 2d 618, 446 N.Y.S. 2d 264 (1981).

> "... the burden is and was at all times on the City clearly to establish the status of a title to exempt it from certification."[8]

The Union alleges that the court recognized that, under the provisions of the Taylor Law, there exists a statutory presumption that public employees are eligible to organize and bargain collectively, and the burden always is on the public employer to prove that employees should be excluded from bargaining because they are managerial and/or confidential.

CWA further alleges that the fact that the titles in question in this proceeding are not "new" titles has no bearing on the burden of proof. Moreover, even if that fact had some relevance - something the Union does not concede - the timing of CWA's petition is reasonable under the circumstances of this case. The Union asserts that it had no reason to petition for certification for the titles until it discovered, in late 1983 or early 1984, that HHC was assigning non-managerial/confidential duties to the titles, many of which duties are identical to those performed by members of CWA's bargaining unit.

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[8] 434 N.Y.S. 2d at 17.

The Union first tried to address this alleged abuse in bargaining sessions with HHC and the City, which subsequently led to the filing of a scope of bargaining petition by the City, CWA's filing of the instant petition for certification, and the execution of a settlement agreement between CWA, HHC, and the City. CWA states that it did not delay in filing to represent these titles, but acted when it became clear through its investigations that the titles were not performing managerial or confidential functions, that the problems in that regard were systemic, and that the titles as utilized by HHC should be accreted to CWA's present bargaining unit. The Union notes that the settlement agreement provides that the Union will proceed with its petition for certification in this matter.

Concerning the doubt expressed by HHC as to the propriety of accretion in this case, CWA alleges that the existing certified bargaining unit contains 6,000 employees in various administrative titles, employed by various agencies throughout the City, including HHC. The Union does not seek to accrete the titles in question to a unit of administrative employees employed by HHC alone. More importantly, the Union, the City, and HHC previously agreed in paragraph "SIXTH" of the

stipulation of settlement that:

> "To the extent and only to the extent that the Board determines that any of the employees in these titles are subject to collective bargaining, the City will not oppose the accretion of those employees subject to collective bargaining to the CWA Bargaining Unit which contains Principal Administrative Associates."

Accordingly, the Union submits that the issue of the appropriateness of the accretion sought herein has been eliminated from these proceedings pursuant to the parties' stipulation.

For the above reasons, CWA requests that HHC's motion be denied in its entirety and that hearings be permitted to proceed forthwith.

Discussion

In this case of first impression, we are asked to examine the relationship which exists between the Taylor Law's familiar criteria of managerial and confidential status[9] and the provisions of two sections of HHC's enabling legislation, Unconsolidated Laws §§7385.11 and 7390.5. A brief review of the history of managerial/confidential determinations may be helpful to an understanding of this issue.

[9] Civil Service Law §201.7(a).

From the first year of this Board's existence, we have recognized that certain employees should be excluded from collective bargaining in order to avoid conflicts of interests and to permit the employer,

> "...to formulate,, determine and-effectuate its labor policies with the assistance of employees not represented by the Union with which it deals;...."[10]

We further held, at an early date, that managerial-executives who formulate policies and determine operating procedures which may become the subjects of collective bargaining or grievances, as well as employees who have regular access to confidential information in the fields of labor relations and personnel management, should be excluded from bargaining units.[11] At the time we made these rulings, both the NYCCBL and the Taylor Law were silent as to the status and bargaining rights of managerial and/or confidential employees. Thereafter, the state and local legislatures recognized the validity of the principles we announced in these early cases. In 1971, the Taylor Law was amended[12] to provide that managerial and confidential employees were not to be considered public employees for purposes

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[10] Decision No. 70-68.

[11] Decision No. 79-68.

[12] 1971 N.Y. Laws, Ch. 503, §4, and Ch. 504, §1.

of collective bargaining rights; and to set forth the definition of managerial and confidential employees which continues to the present day in the statute. In Decision No. 73-71, we held that the criteria set forth in our decisions prior to that date were substantially equivalent to the criteria set forth in the amendments to the Taylor Law, and further, that the Taylor Law criteria and those previously used by this Board were designed to accomplish the same end. Finally, in 1972, the NYCCBL was amended[13] in a manner consistent with the Taylor Law to provide, in §1173-4.1, that:

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

The NYCCBL does not define the terms managerial and confidential employees, and the Taylor Law definition of these terms is one of the provisions of that statute which continues to be directly applicable to proceedings before this Board notwithstanding enactment of the NYCCBL.[14]

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[13] 1972 Local Law No. 1; 1972 Local Law No. 71.

[14] Civil Service Law §212.

In evaluating HHC's argument concerning the criteria of manageriality to be applied to employees of the Corporation, we start with the unequivocal language of §7390.5 of HHC's enabling legislation[15] (hereinafter referred to as "the HHC Act"), which provides, in pertinent part, that:

> "The corporation, its officers and employees, shall be subject to article fourteen of the civil service law and for all such purposes the corporation shall be deemed 'public employees' [sic] provided, however, that chapter fifty-four of the New York City Charter and Administrative Code and Executive Order No. 52 dated September 29, 1967, promulgated by the mayor of the city of New York, shall apply in all respects to the corporation, its officers and employees except that paragraph seven and paragraph eight of said executive order shall not be applicable to the corporation, its officers and employees."

The clear language of the statute thus expresses the Legislature's intent that HHC and its employees be subject to the provisions of both the Taylor Law and the NYCCBL. No exception or limitation is placed upon the applicability of these laws. Certainly, the Legislature knew how to express an exception when such was intended, as was done concerning the applicability of certain terms of Executive order No. 52.

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[15] Unconsolidated Laws, Title 18, Ch. 5, §7381 et seq.

However, HHC argues that the description of managerial and confidential duties contained in §7385 of the HHC Act is more expansive than the Taylor Law criteria and must be held either to supersede or to supplement the Taylor Law criteria. For several reasons, we are not persuaded that this is the case. First, at the time the HHC Act was passed, the Legislature was or should have been aware of prior decisions of this Board in cases which involved, inter alia, employees of HHC's predecessor, the Department of Hospitals,[16] in which managerial/confidential criteria were used which were substantially equivalent to the subsequently-enacted Taylor Law criteria. [17] We believe that if the Legislature had intended that different criteria be applied by this Board with respect to employees of HHC, it would have said so in placing HHC under this Board's jurisdiction.

Second, as noted by CWA, the Court of Appeals, in confirming a decision of this Board which affected, inter alia, employees of HHC, made no mention of the §7385 "criteria" but affirmed that this Board is required to administer the Taylor Law in determining questions of

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[16] See, e.g., Decision No. 79-68.

[17] Decision No. 73-71.

managerial status, and that other guidelines or indicia of manageriality may be used only with constant reference to the Taylor Law criteria and its goals.[18]

Third, it is not clear to us, in any event, that the "criteria" set forth in §7385.11 are broader than the Taylor Law criteria, as alleged by HHC. Section 201.7(a) of the Taylor Law states:

> "...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."

Similarly, §7385.11 of the HHC Act empowers the Corporation to:

> "...employ officers, executives, management personnel, and such other employees who formulate or participate in the formulation of the plans, policies, aims, standards, or who administer, manage or operate the corporation and its hospitals or health facilities, or who assist and act in a confidential capacity to persons who are responsible for the formulation, determination and effectuation of management policies concerning personnel or labor relations, or who determine the number of, and appointment and removal of, employees of the corporation, fix their qualification and prescribe their duties and other terms of employment."

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[18] Civil Service Technical Guild v. Anderson, 55 N.Y. 2d 618, 446 N.Y.S. 2d 264 (1981), rev'g for the reasons stated in the dissenting opinion of Justice Kupferman, 79 A.D. 2d 541, 542, 434 N.Y.S. 2d 13, 15 (lst Dept. 1980).

It must remembered-that the definition contained in §201.7(a) did not exist when §7385.11 was enacted, so identity of language could not be expected. Nevertheless, we believe that both sections are designed to accomplish the same end.

The only explanation offered by HHC to support its view that the §7385.11 standard is broader is found in its contention that, if §201.7(a) and §7385.11 are applied jointly, those who assist in the formulation, determination and effectuation of management policies concerning personnel or labor relations must be found managerial. It is submitted that the Taylor Law, alone, would render only those who make such policies, and not their assistants, managerial.

We find that HHC's contention is based upon a misreading of their statute. The part of §7385.11 dealing with "assistants" is not properly part of the definition of managerial employees; rather it is part of the definition of confidential employees. The full clause in this regard refers to employees:

> "...or who assist and act in a confidential capacity to persons who are responsible for the formulation, determination and effectuation of management policies concerning personnel or labor relations,...." (Emphasis supplied)

The term "assist" is linked to the requirement of acting in a confidential capacity (to a managerial policy-maker). This statutory job description does not render managerial those employees who assist such policy-makers in the absence of a confidential relationship. Thus, we do not find that this HHC Act provision is broader than the Taylor Law standard in this regard.[19]

HHC correctly alleges that, in accordance with principles of general statutory construction, statutes which are in pari materia should be construed together and applied harmoniously and consistently, if possible. 19A We believe that this goal can be accomplished in this case by finding that the descriptions contained in §7385.11 of the HHC Act are to be construed as indicia of managerial and/or confidential status, to be used by this Board solely as aids in applying the governing criteria set forth in §201.7(a) of the Taylor Law. Such a construction will give effect and meaning to both §7385.11 and §201.7(a), will avoid any internal inconsistency within the HHC Act between §7385.11 and §7390.5, and will be consistent with the Court of Appeals'

[19] To the extent that the HHC description of confidential employees may be read as broader than the Taylor Law criteria of confidentiality, a contention tot expressly advanced by HHC herein, we reiterate and adhere to our finding, at pp. 19-20 supra, that it was not intended that a standard other than the Taylor Law criteria be applicable to HHC's employees.

19A McKinney's Statutes §221.b.

ruling in Civil Service Technical Guild v. Anderson, supra. As recognized by the Court in that case, this Board has used other indicia to assist in the application of the Taylor Law criteria in past cases, so it is neither unprecedented nor impermissible to construe and utilize the §7385.11 language as such indicia in the present case. However, it must be emphasized that it will be the Taylor Law criteria which will control our final determination in this matter.

We next consider HHC's argument that the circumstances of this case are such that the presumption of eligibility for collective bargaining has been overcome and that the burden of proof has shifted to the Union. We note that HHC has cited no cases in support of this claim, nor has our own research disclosed any precedent for such a finding. To the contrary, this Board, PERB, and the courts consistently have held that the Taylor Law creates a presumption that all public employees are eligible for collective bargaining, [20] and that the

[20] Civil Service Law §203 provides:

> "Public employees shall have the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder."

burden of proving that employees are managerial and/or confidential, and thus excluded from collective bargaining, rests on the employer. We note, particularly, the statement made by Justice Kupferman, whose dissenting opinion in the Appellate Division was adopted by the Court of Appeals in Civil Service Technical Guild v. Anderson, that

> "...the burden is and was at all times on the City clearly to establish the status of a title to exempt it from certification."[21]

We are not persuaded that the time lapse between the creation of the titles in question and the filing of the petition for certification herein has any bearing on the burden of proof. Neither the Taylor Law nor the decisions of this Board or PERB require a union to file a petition for certification within any time period following the creation of a title. The fact that the employer considers a title to be managerial and that the union only files to represent the title years after its creation is not analogous to a case in which a petition is filed to represent a title previously found by the

[21] 434 N.Y.S. 2d at 17

Board to be managerial, as suggested by HHC. In the latter instance, the prior Board determination is a sufficient reason to require a higher showing by a party seeking to overturn the Board's decision. In the former instance, which is the case herein, there has been no prior determination by the Board; the employer's unilateral designation of the titles as managerial is entitled to no weight in assessing the obligation to be placed on the union.

We also observe that CWA has asserted a reasonable explanation for its failure to petition for the titles in question at an earlier date. Even if this explanation might be considered as a concession that employees in the titles were, at one time, performing managerial functions, it is clearly the Union's position that they are no longer performing managerial functions, and its petition herein was filed as soon as it determined that this was the case. We do not find the Union's period of acquiescence to constitute a waiver of its right to petition for certification. We also do not find that such a period of acquiescence constitutes any basis to overcome the presumption of eligibility for collective bargaining or to shift the burden of proof.

Finally, regarding HHC's concern with the propriety of accretion to the unit requested by CWA in the event that any employees in the titles in question are found eligible for collective bargaining, we find that while the definition of accretion offered by HHC is correct, i.e., the addition of a relatively small group of employees to an existing unit, the existing unit referred to by HHC is incorrect. The existing bargaining unit [22] for which CWA is the certified representative, and to which the Union seeks to accrete the titles in question herein, consists of a City-wide unit of nearly six thousand employees in twenty-one administrative and related titles, including the title Principal Administrative Associate. Although CWA has alleged, in support of its petition, that Assistant Coordinating Managers and Coordinating Managers are being assigned duties identical to those performed by Principal Administrative Associates employed by HHC, the Union has not claimed that the existing unit is limited to Principal Administrative Associates employed by HHC. We hold that HHC's assertion that the existing unit is so limited is with-

[22] Certification No. 41-73 (as amended).

out legal basis.

HHC alleges that there are 694 employees serving in the titles in question. Available figures indicate that there are nearly 6,000 employees in the existing unit to which accretion is sought. Thus, the group of employees proposed to be added to the existing unit represents only about 11% of the size of the existing unit. We consider this group to be "relatively small" compared to the existing unit so as to make accretion appropriate if the other requirements for accretion are proven by the Union.

Additionally, we observe that while it is this Board, and not the parties, by agreement, which has final responsibility for determining the appropriateness of accretion or any other unit placement, it ill behooves HHC to make an issue out of the requested accretion when it has entered into a stipulation of settlement with CWA and the City which provides as follows:

> "To the extent and only to the extent that the Board determines that any of the employees in these titles are subject to collective bargaining, the City will not oppose the accretion of those employees subject to collective bargaining to the CWA Bargaining Unit which contains Principal Administrative Associates."

In any event, we conclude that HHC's objection to the possibility of accretion is without basis.

For all of the reasons stated above, we will deny HHC's motion in all respects and direct that hearings in this matter commence as soon as possible.

O R D E R

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

ORDERED, that the motion of the New York City Health and Hospitals Corporation be, and the same hereby is, denied in all respects; and it is further

DIRECTED, that hearings in this proceeding commence forthwith.

DATED: New York, N.Y.
March 25, 1987

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER