

***Communications Workers of America, Local 1180,76 OCB 4 (BOC 2005)***  
**[Decision No. 4-2005 (Docket No. RU-1243-01).]**

***Summary of Decision:*** Union's petition sought to add the title Administrative Job Opportunity Specialist Levels I and II to its bargaining unit. The City asserted that the petitioned-for employees are managerial and/or confidential. The Board finds that employees in the title Administrative Job Opportunity Specialist Levels I and II, who hold the positions Job Center Director, Deputy Director, and Executive Assistant to a Regional Manager, are eligible for collective bargaining. However, Administrative Job Opportunity Specialists Level II, who hold the positions Director of PRIDE, Deputy Regional Manager, and Executive Assistant to the Executive Deputy Commissioner, are managerial and are therefore excluded from collective bargaining. ***(Official decision follows.)***

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**OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION**

**In the Matter of the Certification Proceeding**

***-between-***

**COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1180,**

***Petitioner,***

***- and -***

**CITY OF NEW YORK and  
NEW YORK CITY HUMAN RESOURCES ADMINISTRATION,**

***Respondents.***

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**DECISION AND ORDER**

On May 18, 2001, Communications Workers of America, Local 1180 ("Union") filed a petition seeking to represent employees of the City of New York ("City") in the title Administrative Job Opportunity Specialist ("Admin. JOS") Levels I and II, and add them to its bargaining unit, Certification No. 41-73. The City asserts that the petitioned-for employees are

managerial and/or confidential and are therefore not eligible for collective bargaining. After reviewing the entire record including testimony from nine days of hearing and post-hearing briefs submitted by the parties in early 2005, we find that employees in the title Admin. JOS Levels I and II, who hold the positions Job Center Director, Deputy Director, and Executive Assistant to a Regional Manager, are eligible for collective bargaining. However, Admin. JOSs Level II, in the positions Director of PRIDE, Deputy Regional Manager, and Executive Assistant to the Executive Deputy Commissioner, are managerial and excluded from collective bargaining.

### **BACKGROUND**

Employees in the title Admin. JOS Levels I and II are employed by the New York City Human Resources Administration (“HRA”). HRA administers social welfare programs and services to eligible individuals and families. During nine days of hearing before the Director of Representation, the City offered testimony from the Executive Deputy Commissioner, who testified about all aspects of operations, and about the positions Executive Assistant to the Executive Deputy Commissioner and Deputy Regional Manager; an Assistant Deputy Commissioner; one Admin. JOS Level I in the position of Deputy Director; two Admin. JOSs Level II in the position of Job Center Director, and one Admin. JOS Level II in the position of Deputy Regional Manager.

### **Title History**

Until about 1998, HRA administered government assistance programs through the Income Support Program (“IS Program”), which provided welfare and food stamps at Income Support Centers (“IS Centers”) throughout the City. Each IS Center contained approximately

100-150 employees. Employees in the title Eligibility Specialist Level III (“ES III”), established initial eligibility for public assistance or verified continuing eligibility for welfare recipients. Principal Administrative Associates Levels I, II, and III (“PAAs”), supervised groups of ES IIIs. An Administrative Manager Level I, or Deputy Director, supervised PAAs and was responsible for the daily running of the IS Center. An Administrative Manager Level II, or Center Director, was charged with the overall operation of the IS Center.

The Office of Employment Services (“OES”), another HRA program, assigned public assistance recipients to the Work Experience Program (“WEP”) for job training and educational programs such as English as a second language classes and GED programs. OES was comprised of Begin Employment, Gain Independence Now offices (“BEGIN offices”), that dealt with employment issues for families receiving public assistance, and a Home Relief central office, that dealt with single adults who did not have families. The OES offices were staffed by Caseworkers (“CWs”) who evaluated public assistance clients for employment capability and referred them to training or work programs. The CWs were supervised by Supervisors. Site Managers had overall responsibility for the OES offices.

In the 1990s, new federal welfare laws imposed a time limitation on welfare benefits and mandated certain work requirements as a condition for receiving benefits. In order to implement those changes, HRA decided to merge the IS Program and OES into one operation called the Family Independence Administration (“FIA”). FIA’s primary goal is to assist public assistance recipients in gaining independence by helping them get paid work. FIA is comprised of Job Centers, each of which has approximately 100-150 employees. Job Centers have policy and procedure manuals that outline how specific units operate and describe legal mandates the Job

Centers must follow. These manuals come from the Office of Policy and Procedures (“OPP”) at HRA’s central office. Initially, the ES IIIs and PAAs handled all eligibility issues in the Job Centers, and the CWs and Supervisors handled work and employment for applicants and recipients.

In early 2001, HRA created several new titles to work exclusively in the Job Centers handling both eligibility and employment issues for public assistance applicants and recipients. The ES IIIs and the CWs were given the choice of remaining in their title or of converting to the new title of Job Opportunity Specialist; employees from the PAA title and from the Supervisor title could convert to the new title Associate Job Opportunity Specialist (“AJOS”). The Deputy Directors and Job Center Directors, many of whom were Administrative Managers, could choose to convert to the new title Admin. JOS Levels I and II, respectively.

**Positions held by Admin. JOS Levels I and II**

As of April 2002, FIA had approximately 30 Job Centers, including Specialty Centers, in seven regions: Bronx, Brooklyn, Staten Island, Manhattan, Queens, Special Needs, and Housing & Homeless Services. At the time, FIA had 56 employees who were Admin. JOS Levels I and II in the following positions: 22 Admin. JOSs Level I in the position Deputy Director, one Admin. JOS Level II in the position Deputy Director, 10 Admin. JOSs Level I in the position Director, 15 Admin. JOSs Level II in the position Job Center Director, 6 Admin. JOSs Level II in the position Deputy Regional Manager, one Admin. JOS Level II in the position Executive Assistant to the Executive Deputy Commissioner, and one Admin. JOS Level I in the position Executive Assistant to a Regional Manager (Bronx).

The Job Center Director is ultimately responsible for the Job Center, and is assisted by the Deputy Director who shares most of the Director's duties and undertakes them in the Director's absence. The Job Center Director reports to a Deputy Regional Manager or Regional Manager. The Regional Managers report to Assistant Deputy Commissioners, who in turn report to the Deputy Commissioner. The Deputy Commissioner reports to the Executive Deputy Commissioner who oversees all the Job Centers and the entire FIA Field Operations.

The general job description for Admin. JOS provides, in relevant part:

All personnel perform work managing the provision of temporary financial assistance and employment/work related services to persons in need, to promote individual and family self-sufficiency, in accordance with agency policies/procedures and federal/state regulations. Develops policies designed to aid program participants in reaching self-sufficiency and emphasizes Work First employment philosophy and programs; designs tracking and monitoring devices to ensure that all participants are moving towards self-sufficiency efficiently/effectively by utilizing employment and other related services. . . .

Under direction, with wide latitude for the exercise of independent judgment and decision-making, manages and is accountable for overseeing the day-to-day operations of groups of Job Center job opportunity teams responsible for temporary financial assistance and employment related services, and/or auxiliary service teams. Coordinates the operation of these units to ensure sufficient staff coverage, productive interaction, and maximum efficiency. Has the primary responsibility for monitoring, controlling and evaluating the performance of assigned units to achieve participant self-sufficiency goals and manages special project assignments. Reviews actions which require management approval and decides such issues or makes recommendations to higher management. Holds regular conferences and/or area meetings with subordinates to assess performance and relay information that directs all energies towards fulfilling the program's employment goals. Recommends to higher management ways to improve operations; acts as a conduit for the ideas and concerns of subordinates. May intervene directly in unit operations in situations which are particularly complex or critical; or performs assignments equivalent to those described herein.

**Job Center Deputy Directors\_\_\_\_\_**

The Deputy Director is in charge of the daily operations of the Job Center. Among other duties, a Deputy Director can assign or temporarily transfer employees within the center in conjunction with the Director; assess work flow; hold meetings with staff regarding performance; and initiate disciplinary proceedings in consultation with the Director.

Leslie Santopietro, an Admin. JOS Level I, is a Deputy Director at the Richmond Job Center in the Staten Island Region. In 2002, the Richmond Job Center had approximately 125-130 employees. As one of two Deputy Directors, Santopietro oversees all the employment functions of the Job Center. The other Deputy Director is in charge of the income support process. Santopietro supervises an AJOS Level II who, in turn, oversees three or four groups of approximately 25-30 employees. On a daily basis, she fields questions from employees managing cases. She helped develop an electronic form to ensure that information sent to the Fair Hearings and Compliance unit would be received. The proposed form was reviewed and ultimately approved by the Assistant Deputy Commissioner and the Executive Deputy Commissioner. Santopietro is also in charge of employment projects for welfare recipients at the New York City Parks and Recreation Department and the Department of Transportation, and acts as a liaison to HRA's central office on employment issues.

Santopietro handles employment related complaints from sources outside the Job Center such as Legal Aid. She also addresses problems and complaints concerning private employment vendors used by HRA. As the overall supervisor of the ACCIS Child Care Team, which provides day-care assistance for public assistance recipients, she deals with problems such as payments to day-care providers.

As part of her duties, Santopietro attends various meetings, including employment meetings, run by the Executive Deputy Commissioner of FIA to discuss performance levels at the Job Centers, and Technology Integration Project (“TIP”) meetings with agency computer technology personnel and representatives of other Job Centers. Santopietro also attends a Job Center Directors meeting at HRA’s central office when the Job Center Director is absent. At one of these meetings, changes in the welfare reform laws were discussed before they were subsequently implemented.

Santopietro completes a performance evaluation for the AJOS Level II who reports directly to her, and signs off on all evaluations completed by the AJOS Level II. Santopietro also approves time and leave requests of staff in conjunction with the Director and the other Deputy Director. She can initiate discipline by writing a memo to HRA’s central office describing an employee’s misconduct but does not recommend penalties. When dealing with Step I grievances, the Director, the other Deputy Director and Santopietro discuss and answer them together.

**Job Center Directors**

The Job Center Director is ultimately responsible for the performance of the Job Center, and implements policy goals and procedures provided by the central office. A Director is responsible for dealing with community boards, elected officials and advocacy groups in their vicinity, and interacting with administrative bodies within HRA. Directors can recommend employees for promotion and initiate disciplinary proceedings after consulting with the Office of Legal Affairs and the Personnel Office. Directors are the primary contact for information needed to respond to Step I grievances filed by employees in the Center, and they sometimes attend

labor-management meetings at HRA's central office if they concern their Job Center. On a monthly basis, the Directors – and in their absence, Deputy Directors – attend a managers' meeting at which Regional Managers, Assistant Deputy Commissioners, and the Executive Deputy Commissioner of FIA are present. Topics discussed include what is expected of the Directors, security within the Job Centers, and issues affecting public assistance recipients.

Inez Lambert, an Admin. JOS Level II, is the Director for the Dyckman Job Center in the Manhattan Region, which has approximately 130 civil service employees and 40 temporary and WEP workers. Two Deputy Directors, two Administrative Assistants and one Secretary report directly to Lambert. Lambert, in turn, reports to one of two Manhattan Deputy Regional Managers. Generally, Lambert oversees personnel issues, monitors the Job Center's performance, makes changes to work flow, and attends meetings. She resolves client problems and responds to inquiries from the public and elected officials.

Every month, Lambert meets with her immediate supervisor, a Deputy Regional Manager, to discuss Job Center issues. Every other month, she attends a meeting with the Manhattan Regional Manager and Deputy Regional Managers, along with other Manhattan Job Center Directors to discuss regional issues. In addition, Lambert, along with all the Job Center Directors and Food Stamp Site Managers, attends a monthly meeting conducted by Assistant Deputy Commissioners and the Executive Deputy Commissioner of FIA to discuss topics related to the welfare program as a whole.

Lambert meets with union representatives on a monthly basis and is involved in responding to Step I grievances. She can initiate disciplinary action against employees by submitting information she receives from a supervisor to the Office of Personnel.



Lambert can reassign employees temporarily within her Job Center to meet its needs but cannot increase the number of employees. She conducts yearly evaluations of employees directly under her supervision; these are reviewed by the Deputy Regional Manager to whom she reports. She in turn reviews and signs evaluations completed by her subordinates. She can approve time and leave requests within the guidelines set by HRA.

**Director of PRIDE**

Marcia Salovitz, an Admin. JOS Level II, is the Director of the PRIDE program within the FIA. The PRIDE program is one of several specialty programs in the Special Needs Region established by HRA to serve public assistance clients who have special needs or obstacles to employment because of mental or physical disabilities. Clients who are evaluated as employable with limitation due to a disability are referred to the PRIDE program, where they are screened and referred to outside vendors for training and job placement. When first implemented, PRIDE worked with 18,000 people. The PRIDE program works in collaboration with the New York State Department of Labor ("NYSDOL"), the Vocational Educational Services for Individuals with Disabilities ("VESID"), and the Office of Work Force Preparation and Continuing Education Services, both offices of the New York State Department of Education ("NYSDOE"). The NYSDOL provides funding for training and employment vendors, and the NYSDOE holds contracts with outside training and placement vendors. HRA, NYSDOL and NYSDOE, share responsibility in choosing vendors and in making changes to the program.

The PRIDE program is located in a Manhattan Job Center and has approximately 150 civil service employees and 10 temporary workers. This is the only PRIDE location in New York City. Salovitz reports to the Deputy Regional Manager of the Special Needs Region. A

Deputy Director, and two Managers, all of whom are Admin. JOS Level I, report directly to Salovitz.

Salovitz can reassign cases amongst employees at her Job Center, can recommend demotions and initiate disciplinary action against employees, reviews and signs employee evaluations, approves overtime and time and leave, and completes evaluations for ten employees. She has final say on who is recommended for hiring for PRIDE. Salovitz is also in charge of developing and implementing specialized PRIDE training for new employees and other staff members. This training is in addition to HRA administered training for new employees.

Salovitz attends various meetings both inside and outside the agency. Every other week, she runs a meeting attended by representatives from HRA, NYSDOL, and NYSDOE, to discuss program operations, contract, finance, billing monitoring, program and staffing issues, and make decisions concerning vendors. For example, those at the meeting decide how much payment a vendor receives. These meetings are attended by Assistant Deputy Commissioners, Regional Managers, Deputy Regional Managers, representatives from the Office of Health and Mental Health Services, OPP, and HRA's office of Finance and Budget ("Finance"). Salovitz has followed up on vendor staffing issues by setting up a plan with which the vendors have complied. With representatives from NYSDOL and NYSDOE, Salovitz also meets regularly with outside training and employment vendors, determines the number of referrals to these vendors, and can make a decision to eliminate a particular vendor.

She meets weekly with her Regional Manager and Deputy Regional Manager to discuss center staffing, operational issues, new policy directives, and employee grievances. At such meetings, Salovitz may develop directives for special projects. For example, in conjunction

with OPP, the Regional Manager, and the Deputy Regional Manager, she was involved in updating PRIDE's policy directive, which was distributed to all HRA staff. She wrote sections of and edited the directive regarding medical referrals and case management. She also meets weekly with the Special Needs Regional Manager to discuss the status of various parts of the program and MIS issues.

Salovitz meets separately with representatives from the Office of Health and Mental Health Services ("OHMHS") to discuss program issues, workflow development, and the case management system. On a regular basis, she and representatives of HRA's Finance office, including Deputy Commissioners, meet to discuss upcoming expenditures of federal welfare and food stamp monies. For example, they have met to develop a contract expenditure plan to extend contracts with vendors through NYSDOE for 18 months. Occasionally, she meets with directors of other programs serving the disabled, and she also has had meetings with advocacy groups such as Legal Aid and the HRA Office of Constituent Affairs. On occasion, Salovitz meets with union delegates and with HRA's legal department when there is a lawsuit against the agency brought by a client of PRIDE.

With her Deputy Regional Manager, she developed a new program at PRIDE to efficiently handle clients who are returned by vendors because of new medical reasons. This pilot program did not require approval from superiors before implementation. PRIDE now requires clients to fill out a form, created by Salovitz, describing their new condition, and to include supporting documentation. This information is reviewed by PRIDE and then is forwarded to the medical vendor who will evaluate the client. After the success of the pilot program, it is planned to be introduced to all of FIA.

Salovitz also established a protocol, in conjunction with OHMHS, to attempt outreach when a client fails to show up for a recertification appointment instead of closing the case immediately, as most Job Centers do. On one occasion, OHMHS made a recommendation to Salovitz to change the process whereby clients are approved by VESID to see a counselor, and at the time of the hearing, she was working on resolving that issue.

### **Deputy Regional Managers**

There are 16 Deputy Regional Managers, 10 who are Admin. JOS Level III, and six who are Admin. JOS Level II. Two or three Job Centers typically report to a Deputy Regional Manager. The performance evaluation form for a Deputy Regional Manager states that the position is responsible for being a representative or spokesperson for the agency; coordinating the activities of the unit with other units and organizations; establishing a work unit's goals, objectives, and priorities, and the structure and processes necessary to carry them out; managing resources and employees; reviewing implementation of policies and programs; and completing performance evaluations of subordinate employees. Deputy Regional Managers establish performance benchmarks for subordinate staff to ensure legal compliance regarding public assistance applicants. A Deputy Regional Manager may allocate staff, in accordance with contractual provisions, between Job Centers. They monitor their Job Centers to ensure that decisions are made in a timely manner and have discretion to shorten overall time goals in order to fulfill specific goals at individual Job Centers.

Along with all the Regional Managers and Assistant Deputy Commissioners, Deputy Regional Managers frequently attend meetings at HRA's central office, and managers' meetings that often include the First Deputy Commissioner. Deputy Regional Managers attend labor-

management meetings when an issue being discussed affects the regions for which they are responsible. During the creation of the Job Centers, Deputy Regional Managers along with the Regional Managers, and in consultation with the Deputy Commissioner, made decisions regarding where to move staff and whether to close an office. For example, when FIA decided to move Caseworkers into the Job Centers, the issue was first discussed with Regional Managers. The Deputy Regional Managers were then responsible for determining how this decision would affect operations, and when to implement it.

Deputy Regional Managers usually have certain areas of responsibility within their region. For example, the Deputy Regional Manager in charge of employment issues works closely with outside vendors and the Job Center Directors to ensure that employment programs and agency employment policies are implemented.

Deputy Regional Managers also oversee the Fair Hearing Process, an administrative process for people contesting agency decisions. Along with the Regional Manager, they work closely with elected officials, and attend meetings with them. When a Regional Manager is absent, a Deputy Regional Manager is expected to assume his or her duties in the community and to attend external meetings. For example, if issues should arise in the Bronx Region regarding Bronx Job Centers, the Deputy Regional Manager would take over the duties of the Regional Manager in working with the Bronx Borough President.

Kevin McGuire, an Admin. JOS Level II, is one of three Deputy Regional Managers for the Bronx region. The three Bronx Deputy Regional Managers jointly supervise the Job Centers and Food Stamp Offices for the Bronx. Six Job Centers report to McGuire. Three Administrative Assistants, two AJOSs Level III and a Staff Analyst II report directly to him. He

completes their performance evaluations and has final authority to discipline them. In conjunction with the Regional Manager, McGuire completes annual evaluations of the Job Center Directors. He can temporarily transfer employees between Job Centers and can direct Job Center Directors to deny overtime beyond set overtime caps.

During the creation of the Job Centers, HRA hired outside contractors to assess welfare applicants, to train them, and to place them in employment or work-related activities. McGuire helped develop procedures for Job Center staff to make referrals to these outside contractors, sat in on the initial contract negotiations, and helped select the vendors.

He explained the agency's reorganization to staff at IS Centers and OES offices and informed unions about staff relocations. McGuire and the other Deputy Regional Managers worked with OPP to develop procedures for running the Job Centers which were approved by the Deputy Commissioner and Executive Deputy Commissioner. McGuire has also worked with HRA's MIS personnel to reassign clients and to computerize workflow through a system called New York City WAY.

McGuire collects data and completes weekly reviews of his region. He brings the data and reviews to "job stat" meetings with Job Center Directors, the Deputy Regional Managers, the Bronx Regional Manager, the Deputy Commissioners, and the Commissioner. At these meetings, the participants look at monthly productivity and trends for particular Job Centers based on Job Center specific statistics, and discuss strategies to meet agency goals. Occasionally, vendors attend these meetings. Every two weeks, Food Stamp Site Managers and Job Center Directors meet with the Regional Manager and Deputy Regional Managers to review staffing, time limits for recertifications and applications, reduction of errors, and effectiveness of

employment activities. Employment meetings and welfare reform meetings are held once a week and are attended by the Commissioner, Deputy Commissioners, Regional Managers, Deputy Regional Managers and the directors of support operations. McGuire also contacts and meets with other city agencies such as the New York City Parks and Recreation Department, New York City Department of Transportation, and the New York City Department of Employment.

McGuire has collaborated with the Bronx Borough President's office to make sure that Bronx constituents take advantage of Bronx job development and creation initiatives under the Bronx Overall Economic Development Corporation. For example, he has met with major retailers in the Bronx, like Kmart, Sears, JC Penney, and Montefiore Medical Center, with which HRA has a contract, to find out if there are opportunities for job development and creation. As a result, McGuire got JC Penney in contact with HRA's employment vendors.

McGuire also helped strengthen the recruitment efforts of Job Corps, an organization that assists unemployed people between 16-24 who are not in school to get jobs. He represented the agency in Job Corps' annual convention where he described the recruitment efforts in the Bronx region. He helped set up a process whereby young people who are no longer eligible to receive public assistance are given an invitation to Job Corps. He also advocated for a HRA contract to get child-care networks to provide child-care training for participants. HRA agreed, and McGuire worked with Job Center Directors to develop a program to train individuals to become licensed family-day-care providers, and then assist them in getting jobs.

**Executive Assistant to the Executive Deputy Commissioner**

As an Admin. JOS Level II, Gwendolyn Gaut is the Executive Assistant to the Executive Deputy Commissioner, who is the head of all of FIA's operations and testified as to Gaut's duties. Gaut did not testify at the hearing.

Gaut represents the Executive Deputy Commissioner at agency-wide councils and heads a group which determines and directs agency departments on how to move Job Centers. Gaut also heads the FIA security task force that evaluates and ensures security issues. This task force meets monthly at the Executive Deputy Commissioner's office and is attended by representatives from all the Regional Managers' offices, and the head of the Office of Advocacy, a department of HRA's Office of Legal Affairs. At the behest of the Executive Deputy Commissioner, Gaut also heads committees to address new initiatives and undertakes other administrative tasks. For example, Gaut headed a group to introduce a new employment plan in Job Centers citywide which requires employees to fill out a document before they can assign applicants to employment activities. Gaut meets with representatives from the regions on a weekly basis to coordinate operations, procedures, training, and online systems to implement the employment plan.

When Gaut is involved in a lawsuit against the agency, she meets with opposing attorneys and works with other parts of the agency. For example, when the agency was involved in a lawsuit regarding the Home Energy Assistance Program, Gaut worked with the attorneys and program administrators to discuss changes that needed to be made to FIA operations to deal with issues addressed in the lawsuit. She helped implement and is now in charge of "The Language Line," a service for applicants who speak a language that no one in the Job Center knows. Gaut sometimes attends labor-management meetings if she is involved in the issues to be discussed.



**POSITIONS OF THE PARTIES**

**Union's Position**

The Union asserts that employees in the title Admin. JOS Levels I and II are eligible for collective bargaining. According to the Union, the Board has found eligible many similarly situated employees under the criteria established. In particular, the employees at issue do not formulate policy but work within established agency guidelines, policies, and procedures. The Union asserts that although Job Center Directors and Deputy Directors issue directives to staff and receive "policy directives" from central office, ultimately they exercise their discretion only within the specified guidelines of such policy.

Further, the Union argues that while Directors exercise discretion in determining the methods by which policy is implemented, they do not make policy and must first seek approval for such implementation. When a new policy or procedure is formulated at high-level managers' meetings, the Regional Managers inform the Directors who formulate a plan to implement the policy which must be approved by the Regional Manager.

Moreover, the Union asserts that Directors' regular attendance at managerial meetings – and in their absence, Deputy Directors – does not demonstrate managerial status because discussions are primarily informational or concern the implementation of procedures and policies that are developed at higher levels of management.

According to the Union, the Directors' and Deputy Directors' involvement in labor relations is not sufficient to be managerial. They do not meet with union representatives regularly, and there is no evidence that they take part in collective bargaining. They are not involved with the grievance process after Step I.

The Union argues that the City has failed to make its case that Admin. JOSs Level II holding the functional title of Deputy Regional Manager are managerial or confidential. McGuire is the only Deputy Regional Manager to testify. Even assuming that McGuire's duties fulfill the Board's criteria for managerial or confidential status, he has almost no knowledge of the duties of other Deputy Regional Managers. There is thus insufficient evidence to conclude that other Deputy Regional Managers have responsibilities similar to those of McGuire.

The Union asserts that McGuire's testimony supports the Executive Deputy Commissioner's testimony that Admin. JOSs Level II are not involved in the formulation of policy but assist in following the programs that have already been set by upper level management. McGuire's testimony about his duties is too vague to satisfy the City's burden. The decisions to create Job Centers, use outside vendors for training and work placement, and computerize or update office systems, were made at a higher level. McGuire's role involved technical implementation of such decisions and did not constitute policy formulation. McGuire has minimal labor relations duties, has routine supervisory duties, does not make ultimate decisions regarding discipline, and can only temporarily transfer staff. There is no evidence that McGuire is involved in budget issues. Finally, the Union argues that he cannot be classified as a confidential employee.

The Executive Deputy Commissioner provided the only testimony regarding Gaut, another Admin. JOS Level II. The Union claims that there is no evidence that the committees she heads are policy-making bodies; at most, they carry out policies established elsewhere. Gaut has minimal labor-management involvement and accompanies the Executive Deputy Commissioner to labor-management meetings if a project she is involved with is being discussed.

Such activities do not make Gaut managerial. Finally, the Union argues that there is no indication that Gaut assists the Executive Deputy Commissioner, or anyone else, in a confidential capacity with collective bargaining, the administration of collective bargaining agreements, or the conduct of personnel relations.

**City's Position**

The City asserts that the record establishes that the duties and responsibilities of employees in the title Admin. JOS Levels I and II meet a variety of the criteria used by the Board in determining managerial and/or confidential status.

The City argues that the creation of the Job Centers resulted in increased responsibilities for Admin. JOS Levels I and II and these employees play a critical role in formulating agency-wide policy for HRA. For example, Directors are responsible for holding meetings at which new policy directives and procedures are developed, and they work with Deputy Directors to initiate and pursue disciplinary charges against subordinates.

The City asserts that Deputy Directors, Directors, and Deputy Regional Managers attend meetings which are attended only by managerial and confidential personnel who play a key role in formulating policy for the agency and at which high-level decisions are made. The employees in these positions speak on behalf of management and implement departmental policy.

According to the City, Deputy Directors, Directors, and Deputy Regional Managers have significant responsibility in personnel administration. Directors are ultimately responsible for their Job Centers, have authority to transfer and assign personnel, can initiate discipline and authorize time and leave and overtime. Deputy Directors assume the duties of Directors when they are not available. Directors and Deputy Directors are also involved in discussions regarding

budgetary matters, and Deputy Regional Managers play a key role in developing budgets and developing budget proposals.

Finally, the City argues that Directors, Deputy Directors, and Deputy Regional Managers have a significant role in labor relations. Directors, along with Deputy Directors, attend labor-management meetings on behalf of management and meet with union delegates to resolve personnel problems. They also act as representatives of HRA in meetings with various agencies and organizations outside HRA. McGuire had regular meetings as a management representative with unions during the development of the Job Centers.

In conclusion, the City asserts that the record establishes that the vast majority of Admin. JOSs Levels I and II are managerial and/or confidential employees within the definitions used by the Board. Even if the Board should find that not all of the employees sought engage in managerial activities, all of them are subject to assignment thereto at any time. Accordingly, it would be inappropriate to split the title between eligible and ineligible employees.

### **DISCUSSION**

We find that employees in the title Admin. JOS Levels I and II, with certain exceptions, are not managerial and/or confidential employees because they are not significantly involved in policy-making and do not engage in budget formulation, labor relations, or collective bargaining on behalf of HRA. Further, they do not assist or act in a confidential capacity to managerial employees responsible for labor relations or personnel functions. Therefore, employees in the title Admin. JOS Levels I and II who hold the positions Job Center Director, Deputy Director and Executive Assistant to a Regional Manager, are eligible for collective bargaining. However,

Admin. JOSs Level II in the positions Director of PRIDE, Deputy Regional Manager, and Executive Assistant to the Executive Deputy Commissioner, are managerial and therefore ineligible for collective bargaining.

Section 12-305 of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) states, in pertinent part, that “public employees shall be presumed eligible for the rights set forth in this section . . . ,” such as the right to self-organization and the right to bargain collectively. Therefore, when the City objects to the bargaining status of a title, the City has the burden to demonstrate that a title is not eligible for bargaining because it is managerial and/or confidential. Pursuant to NYCCBL § 12-309(c)(4), determinations concerning employees’ eligibility for representation are made consistent with § 201.7 of the N.Y. Civil Service Law Article 14 (“Taylor Law”). *Communications Workers of America*, Decision No. 5-87 at 16-17. The relevant language of § 201.7(a) provides:

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 negotiation or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

In implementing this section of the Taylor Law, we have consistently held that formulation of policy is the single most important factor indicating managerial status. *EMS Superior Officers Ass’n*, Decision No. 10-2001 at 21; *District Council 37*, Decision No. 4-97 at 31, *aff’d*, *City of New York v. District Council 37*, No. 403334 (Sup. Ct. N.Y. Co., Apr. 27, 1999); *Assistant Deputy Wardens Ass’n*, Decision No. 11-95 at 17-18; *District Council 37*,

Decision No. 34-81 at 7; *Civil Serv. Technical Guild, Local 375*, Decision No. 45-78 at 5, *rev'd*, *Civil Serv. Technical Guild, Local 375 v. Anderson*, N.Y.L.J., Oct. 9, 1979 (Sup.Ct. N.Y. Co.), at 10, *aff'd*, 79 A.D.2d 541 (1st Dept. 1980), *rev'd*, 55 N.Y.2d 264 (1981) (reinstating the Board's decision). We have also considered the following factors as reliable indicia of managerial status: the number of subordinate employees; area of authority; involvement with labor relations; preparation of budget and allocation of funds; and involvement in personnel administration. *See Allied Bldg. Inspectors, Local 211, I.U.O.E.*, Decision No. 13-86; *Communications Workers of America*, Decision No. 63-72 (personnel administration); *Civil Serv. Technical Guild, Local 375*, Decision No. 5-85 and *Civil Serv. Forum, Local 300, SEIU*, Decision No. 8-72 (preparation and allocation of budget); *District Council 37, Local 317*, Decision No. 46-72, and *Civil Serv. Bar Ass'n*, Decision No. 43-69 (involvement in labor relations); *District Council 37*, Decision No. 19-71 (scope of authority); *Serv. Employees Int'l Union, Local 144*, Decision No. 43-69 (number of subordinates).

This Board has defined "policy" as an objective of a governmental agency to fulfill its mission and the methods, means, and extent of achieving such objectives. *EMS Superior Officers Ass'n*, Decision No. 10-2001 at 21; *Uniformed Sanitation Chiefs Ass'n*, Decision No. 4-2000 at 26. Employees who "formulate" policy include those with the authority or responsibility to select among options and to put a proposed policy into effect, as well as those who "regularly participate" in the "essential process" which results in a policy proposal and the decision to put such proposal into effect. *Uniformed Fire Officers Ass'n, Local 854*, Decision No. 15-92 at 19-20; *District Council 37*, Decision No. 36-82 at 14. Participation in the formulation of policy must be "regular," "active," and "significant" to support a finding of managerial status. *Id.*

Applying the above criteria to the instant matter, we find that employees in the title Admin. JOS Levels I and II who hold the positions Job Center Director, Deputy Director, and Executive Assistant to a Regional Manager, are not managerial because they are not significantly involved in policy-making and do not engage in budget formulation, labor relations, or collective bargaining on behalf of HRA. Further, they do not assist or act in a confidential capacity to managerial employees responsible for labor relations or personnel functions.

Deputy Directors and Directors hold many of the same responsibilities. Both positions are involved in the daily operations of the Job Centers. While Deputy Directors and Directors have significant supervisory responsibilities, such as supervising and assigning employees within a Job Center, overseeing disciplinary matters, handling grievances at Step I, completing or reviewing employee evaluations, approving time and leave requests, monitoring the Job Centers' performance, resolving client problems and complaints, and implementing policies and procedures, they exercise limited independent judgment and discretion in these matters and generally follow the parameters set forth in official guidelines and/or carry out the directives of superiors.

We find that the Deputy Directors' and Directors' supervisory responsibilities do not rise to the level of managerial status. Although they may reassign employees temporarily within a Job Center to meet specific needs, they cannot increase the number of employees in a Job Center or transfer employees permanently. They may approve time and leave requests but only if such requests are within guidelines set by HRA's central office. Further, they prepare personnel evaluations that are reviewed by superiors and they have very limited involvement in promotions. In addition, although Deputy Directors and Directors can initiate discipline by writing a memo to

HRA's central office, they neither recommend nor determine penalties. The Board has indicated that these types of responsibilities, and in fact greater supervisory authority, do not constitute a managerial level of responsibility. *See EMS Superior Officers Ass'n*, Decision No. 10-2001 at 23 (concluding that while Division Commanders have ample supervisory responsibilities as demonstrated by the number of subordinates, discretion in allocation of resources to maintain daily operations, duties to schedule and assign work, and the ability to transfer and evaluate employees, these responsibilities fall short of the level that can be found managerial).

Moreover, the record does not indicate that the meetings attended by Directors – and in their absence, Deputy Directors – which are also attended by higher level management, concern topics other than day-to-day operational affairs of the Job Centers. At the managers' meeting, issues directly related to the Directors' performance and the operation of their Job Centers are discussed. Directors meet with their immediate supervisor, a Deputy Regional Manager, to discuss issues within the Job Center and may also attend meetings at HRA's central office if an issue to be discussed concerns their Job Center. We conclude that Directors do not have requisite independent authority to develop policy and are not significantly involved in making policy. This conclusion is consistent with *Uniformed Fire Officers Ass'n, Local 854*, Decision No. 15-92 at 22, in which we held that regular meetings primarily dealing with operational matters and attended by higher level management were “not policy-making sessions.”

Nor do Deputy Directors or Directors engage in collective bargaining and/or budget preparation. Accordingly, Job Center Directors and Deputy Directors do not possess a significant and regular role in the policy-making process, and do not possess a combination of other indicia of managerial status sufficient to warrant their exclusion from collective bargaining.



Although the City asserted that all employees in the title Admin. JOS Levels I and II are managerial and/or confidential, the City presented no evidence to rebut the presumption of eligibility for collective bargaining under the NYCCBL regarding the Admin. JOS Level I in the position Executive Assistant to a Regional Manager. Therefore, we find that this employee is eligible for collective bargaining.

However, Admin. JOSs Level II, who hold the positions Director of PRIDE, Deputy Regional Manager, and Executive Assistant to the Executive Deputy Commissioner do possess the authority that warrants designating them managerial.

The Director of PRIDE is in charge of the only citywide program to serve public assistance clients who have obstacles to employment because of mental or physical disabilities. Similar to the Job Center Directors, she has many supervisory responsibilities. However, in addition to these responsibilities, she is directly involved in working with other agencies on the programming level to ensure that HRA's mission and the goals of PRIDE are carried out. Every other week, she runs a meeting with senior management personnel and representatives from other agencies and departments to discuss program operations. At such meetings, decisions are made regarding staffing, payment to vendors, and other operations issues. She collaborates and meets regularly with HRA's Finance office to address yearly concerns such as developing the contract expenditure plan and deciding how to allocate federal and state funding. She also meets regularly with OHMHS to make sure that PRIDE's programs are functioning effectively.

Further, the Director of PRIDE, with OPP, her Regional Manager and Deputy Regional Manager, has been directly involved in updating and writing the PRIDE policy directive that was distributed to all HRA staff. She has also developed at least two programs to improve PRIDE's

services – for example, a pilot program to evaluate clients who face unemployment because of new medical conditions and a protocol to attempt outreach to clients who would otherwise have their cases closed.

In sum, the Director of PRIDE has an integral and significant role in the policy-making process and regularly participates in high-level management meetings. Although she may not possess independent authority to make policy, the overall testimony shows that she has significant discretion in the operation of PRIDE and a significant role in defining, as well as implementing, policies and programs designed to fulfill the mission of PRIDE and HRA. Accordingly, we find that the position Director of PRIDE is managerial.

Similarly, Deputy Regional Managers in the title Admin. JOS Level II are managerial. The record supports a finding that Deputy Regional Managers regularly participate in the “essential process” that results in a policy proposal and the decision to put such a proposal into effect. For example, Deputy Regional Managers were directly involved in the creation of the Job Centers. They regularly participated in meetings at which procedures for Job Center operations were developed and at which decisions were made regarding where to move staff and which offices to close. They were also responsible for explaining to employees at the IS Centers and OES HRA's plan to create Job Centers. At “job stat” meetings, McGuire helped senior management develop strategies to meet agency goals and provided data and reviews of his region.

Deputy Regional Managers, in contrast to Job Center Directors, are responsible for at least two or more Job Centers, have borough-wide responsibilities, set priorities for their region, and determine what actions must be taken to meet the goals and standards of HRA. In their

supervisory capacity over the Job Centers that report to them, they have the authority to reallocate staff within and between Job Centers, they have discretion to set performance benchmarks and to shorten the timeframe set by HRA to make decisions on public assistance cases at specific Job Centers.

Deputy Regional Managers are directly involved in exploring ways to meet HRA's goals. For example, McGuire contacted major companies and organizations to strengthen existing relationships with HRA and developed new job recruiting programs for HRA. In addition, he helped improve the recruitment efforts at Job Corps for HRA constituents. Although Deputy Regional Managers do not appear to possess independent discretion in policy-making, at a minimum, they act as "expert advisors" concerning operations in the respective regions, and, therefore, their role in policy-making is significant. *See EMS Superior Officers Ass'n*, Decision No. 10-2001 at 27; *see also District Council 37*, Decision No. 19-71 at 11. Accordingly, we find that Deputy Regional Managers are managerial.

Likewise, the Executive Assistant to the Executive Deputy Commissioner, an Admin. JOS Level II, is a managerial employee. This position is unique among the other positions held by Admin. JOSs Level II because the Executive Assistant reports daily and directly to the Executive Deputy Commissioner of FIA and has a regular and significant role in assisting him. Gaut represents the Executive Deputy Commissioner at agency-wide councils, leads a committee that determines how to move Job Centers, and heads the security task force that ensures adequate security coverage at FIA. She also heads other committees, and undertakes initiatives such as developing and implementing a citywide plan to change how employees assign public assistance clients to jobs. She was in charge of developing "The Language Line" service and worked with

Regional Managers and vendors to implement it. Although the Executive Assistant does not appear to possess independent discretion in policy-making, she has an integral and significant role in the policy-making process and regularly participates in high-level policy meetings. Accordingly, we find that the position Executive Assistant to the Executive Deputy Commissioner is managerial.

Having found employees in the title Admin. JOS Levels I and II eligible for collective bargaining – except for Admin. JOSs Level II in the positions Director of PRIDE, Deputy Regional Manager, and the Executive Assistant to the Executive Deputy Commissioner – and the City having raised no objection to the appropriateness of the petitioned-for unit for this title, we find that addition of the title to the petitioned-for unit is appropriate.

**ORDER**

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

ORDERED, that the employees in the title Administrative Job Opportunity Specialist Levels I and II, are eligible for collective bargaining, except for Administrative Job Opportunity Specialists Level II who hold the positions Director of PRIDE, Deputy Regional Manager, and Executive Assistant to the Executive Deputy Commissioner who are designated managerial and excluded from collective bargaining; and it is further,

ORDERED, that Certification No. 41-73 (as previously amended) be, and the same hereby is, further amended to include the title Administrative Job Opportunity Specialist Levels I and II (Title Code 10248), subject to existing contracts, if any.

DATED: July 28, 2005  
New York, New York

MARLENE A. GOLD  
CHAIR

CAROL A. WITTENBERG  
MEMBER

GEORGE NICOLAU  
MEMBER

**NOTICE OF AMENDED CERTIFICATION**

This notice is to acknowledge that the Board of Certification has issued a Decision and Order as follows:

**DATE:** July 28, 2005 **DOCKET #:** RU-1243-01

**DECISION NUMBER:** 4-2005

**EMPLOYER:** The City of New York, represented by the Office of Labor Relations,  
40 Rector Street, New York, New York 10006.

**CERTIFIED/RECOGNIZED BARGAINING**

**REPRESENTATIVE:**

Communications Workers of America, Local 1180,  
6 Harrison Street, New York, New York 10013

**AMENDMENT:** Certification No. 41-73 has been amended to add the following  
Title/Code:

**Added:** **Administrative Job Opportunity Specialist Levels I and II  
(Title Code 10248)**

### **NOTICE OF DESIGNATION**

This notice is to acknowledge that the Board of Certification has issued a Decision and Order designating a title/position managerial and/or confidential as follows:

**DATE:** July 28, 2005 **DOCKET #:** RU-1243-01

**DECISION NUMBER:** 4-2005

**EMPLOYER:** The City of New York, represented by the Office of Labor Relations,  
40 Rector Street, New York, New York 10006.

**CERTIFIED/RECOGNIZED BARGAINING  
REPRESENTATIVE:**

Communications Workers of America, Local 1180,  
6 Harrison Street, New York, New York 10013

**DESIGNATION:** Administrative Job Opportunity Specialists Level II in the positions Director of PRIDE, Deputy Regional Manager, and Executive Assistant to the Executive Deputy Commissioner are designated managerial and are therefore excluded from collective bargaining.