

Organization of Staff Analysts, 78 OCB 1 (BOC 2006) [Decision No. 1-2006
(Rep) (Docket No. AC-11-03)].

Summary of Decision: OSA filed a petition to add the employees in the title Senior Management Consultant (Business Organization and Methods) to its bargaining unit. With limited exceptions, the Board found the title eligible for collective bargaining. ***(Official decision follows.)***

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

- between -

ORGANIZATION OF STAFF ANALYSTS,

Petitioner,

- and -

**THE CITY OF NEW YORK and
THE CITY OF NEW YORK HEALTH AND HOSPITALS
CORPORATION,**

Respondents.

DECISION AND ORDER

On July 14, 2003, the Organization of Staff Analysts (“Union”) filed a petition for certification, docketed as AC-11-03, seeking to add employees in the title Senior Management Consultant (Business Organization and Methods) Levels I and II (Title Codes 983711 and 983712) (“SMC”) employed at the New York City Health and Hospitals Corporation (“HHC” or “Corporation”) to Certification No. 3-88, which presently covers the title Staff Analyst and related titles. HHC alleges that the employees are managerial and/or confidential. This Board finds that, with the exception of certain positions which this Board finds to be managerial and/or confidential,

the employees in the SMC title are eligible for collective bargaining.

BACKGROUND

On January 20, 2004, this Board issued an interim decision in this matter finding that HHC's designation of the SMC title as managerial and/or confidential is not entitled to deference and that the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") and the New York Civil Service Law Article 14 ("Taylor Law"), not HHC's enabling legislation (New York City Health and Hospitals Corporation Act, N.Y. Unconsolidated Law §§ 7381-7406) ("HHC Act"), govern the determination of managerial and/or confidential status. *Org. of Staff Analysts*, Decision No. 1-2004.

Thereafter, a hearing was conducted over ten days at which 46 SMCs testified. In addition, 229 SMCs completed a survey, compiled by the Director of Representation in conjunction with the Union and HHC, regarding their job duties, labor relations responsibilities, personnel responsibilities, confidential status, budgetary responsibilities, supervisory functions, and role in policy formulation. All the surveys were admitted into evidence.

At the time post-hearing briefs were filed, there were 237 employees serving in the SMC title at HHC, 181 in Level I and 56 in Level II.¹ They are employed throughout the Corporation in over a dozen different facilities/programs in a variety of departments. Many SMCs do not have in-house office titles.

According to the position description, an SMC "[u]nder direction, with broad latitude for the

¹ Certain employees who testified and/or submitted surveys were no longer employed as SMCs at the time post-hearing briefs were filed in this case. The parties did not address these individuals in their briefs. Accordingly, they will not be addressed in this decision.

exercise of independent judgement, acts as an expert consultant and advisor on complex and important management problems, with particular reference to business organization and methods; performs related work.” The following are listed as examples of typical tasks:

1. Provides expert consultant services for the use of executives, department heads, other departmental personnel, and to inter-corporate facilities or City-wide committees on business organization and methods, and the establishment and implementation of programs for the evaluation, improvement and regularization of normal business operations.
2. Engages in research on business organization and methods to assist in the development and installation of methods and techniques of general application in wide areas of departmental determination and execution or achievement of management policies, objectives and goals.
3. Prepares or supervises the preparation of reports on departmental organization and administration of normal business operations in light of study and analysis of surveys designed to secure optimum efficiency, economy and adequacy of public service and conveniences.
4. Conducts or supervises the conduct of special studies of assigned complex and important management problems.
5. Participates in the establishment and maintenance of effective cooperation and liaison with executive personnel in City departments and agencies, other government agencies and private agencies concerning problems and activities in the area of business organization and methods or the conduct of special studies of management problems.

In order to be qualified, candidates are required to have either (1) a master’s degree in public administration or business administration and four years of full-time paid experience in management analysis or operational direction, planning, coordination or control, two years of which must have been in a supervisory, administrative, or consultative capacity, (2) a baccalaureate degree and five years of experience, three of which must have been in a supervisory, administrative, or consultative capacity, or (3) a satisfactory equivalent including at least two years of supervisory, administrative,

or consultative experience.

POSITIONS OF THE PARTIES

HHC's Position

HHC asserts that employees in the SMC title are managerial and/or confidential and should, therefore, be excluded from collective bargaining. While reserving its arguments regarding whether the Board should make its determination under the HHC Act, HHC acknowledged this Board's Interim Decision rejecting that argument and, accordingly, relied on decisions addressing the managerial and/or confidential standards set forth in the NYCCBL and the Taylor Law. HHC asserts that the employees at issue are managerial and/or confidential under both the HHC Act and the NYCCBL and the Taylor Law.

Specifically addressing the SMCs who testified and relying on the surveys of the remaining SMCs, HHC argues that SMCs are managerial because they formulate policy by working on or writing policies, allocating funds, or acting as expert advisors. In addition, SMCs are managerial because they prepare budgets, allocate funds, and are involved in collective bargaining or labor relations. Lastly, certain SMCs are confidential because of their involvement in labor relations, close proximity to the Labor Relations Office, or access to confidential information regarding the closure of clinics.

Union's Position

The Union argues that, with few exceptions, HHC has not sustained its burden of showing that SMCs should be excluded from collective bargaining. Most employees checked "No" in response to survey questions regarding policy making, labor relations and confidential status.

According to the Union, while some checked “Yes”, the individual surveys indicate that the employee had no real responsibility within the Taylor Law’s meaning of policy making or confidentiality. The Union contends that representing HHC in a step of the grievance process or at labor-management meetings is irrelevant without a showing that the employee has the power to effectuate substantive and significant change. Further, occasional or irregular attendance at high level meetings is not indicative of managerial status unless the employee is clearly involved in substantive policy making. Similarly, updating or writing a written “policy” does not make a person managerial when the employee is putting a policy into written form or delineating the procedure for implementing the policy. Specifically addressing the SMCs who testified and a handful of SMCs who just submitted a survey, the Union argues that all but a few SMCs are eligible for collective bargaining because they do not formulate policy in a regular, significant, and active manner.

DISCUSSION

Section 12-305 of the 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 an employer objects to the bargaining status of a title, that employer has the burden to demonstrate that the title is not eligible for bargaining because it is managerial and/or confidential. Pursuant to NYCCBL § 12-309(b)(4), determinations concerning employees’ eligibility for representation are made consistent with § 201.7 of the 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 employee described in clause (ii).

In implementing § 201.7 of the Taylor Law, the Board of Certification has 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 Dep't 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, and *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.*

As to the issue of confidentiality, § 201.7(a) of the Taylor Law defines a “confidential” employee as one who acts in a confidential capacity to a managerial employee involved in collective negotiations, the administration of collective bargaining agreements, or in personnel administration. To establish confidentiality, the employer must meet a two-pronged test. First, the employee must assist a manager in collective negotiations, the administration of collective bargaining agreements, or in personnel administration. Second, the employee must act in a confidential capacity to that manager. See *New York City Dep’t of Investigation Investigator’s Ass’n*, Decision No. 2-2003 at 17-18; *Civil Serv. Employees Ass’n*, 32 PERB ¶ 3001 (1999). This analysis is to determine whether the employee regularly has “access to confidential information concerning labor relations and/or personnel matters to such an extent that their inclusion in collective bargaining would lead to conflicts of interest inimical to the bargaining process and the full and fair representation of the employer’s interests.” *District Council 37*, Decision No. 4-98 at 13-14. The secretive or highly sensitive nature of an employee’s work alone does not compel a confidential designation. *Ass’n of*

New York City Assistant Dist. Attorneys, Decision No. 13-74 at 26. Rather, the employee's involvement in collective negotiations, the administration of collective bargaining agreements, or personnel administration makes him or her ineligible for inclusion in collective bargaining.

In applying the Taylor Law standards, we determine the eligibility of employees in the SMC title as organized by HHC facility. Although HHC contends that SMCs are also managerial and/or confidential under the HHC Act, we decline to make an alternate ruling applying that statute. For the reasons stated in our interim decision, *Organization of Staff Analysts*, Decision No. 1-2004, the determination of managerial and/or confidential status is properly made under the NYCCBL and the Taylor Law. Both the NYCCBL and the HHC Act place HHC under our jurisdiction, *see* NYCCBL § 12-303(g), NYCCBL § 12-304(b), and HHC Act § 7390.5, and we have the power and duty to determine whether employees are managerial/confidential under §201.7 of the Taylor Law, *see* NYCCBL §12-309(b)(4).²

² NYCCBL § 12-303(g) provides, in relevant part:

The term "public employer" shall mean . . . (2) the board of education, the New York city health and hospitals corporation, the New York city off-track betting corporation, the New York city board of elections and the public administrator and the district attorney of any county within the city of New York. . . .

NYCCBL § 12-304 provides, in relevant part:

This chapter shall be applicable to . . .

b. any agency or public employer, and the public employees and public employee organizations thereof, which have been made subject to this chapter by state law. . . .

NYCCBL § 12-309(b) provides, in relevant part:

The board of certification, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty . . . (4) to determine whether specified public employees are managerial or confidential within the meaning of subdivision seven of section two hundred one of the civil service law [Taylor Law] and thus are excluded from collective bargaining. . . .

HHC Act § 7390.5 provides, in relevant part:

Central Office

Maria Castro, a SMC Level I, works in the Corporate Budget department in the Expense Budget division. She did not testify.³ According to her survey, she is involved in preparing the annual HHC Revenue and Expense Budget Allocation. She is responsible for allocating funds to facilities in the North Bronx Network, the South Manhattan Network, the Central Brooklyn Network, and the Southern Brooklyn/Staten Island Network.⁴ She acts as a liaison with Chief Financial Officers (“CFOs”) and Budget Directors to assist in the resolution of network and facility budget issues. Along with the Assistant Director of Corporate Budget, she determines the number of employees who are union members and, based on their salaries, calculates what collective bargaining costs the Corporation. She calculates the impact of collective bargaining proposals on the current fiscal year’s budget and future budget calculations. She develops models to assess the cost to the Corporation based on various scenarios. She also interprets union contracts to define specific

The corporation, its officers and employees shall be subject to article fourteen of the civil service law [Taylor Law] and for all such purposes the corporation shall be deemed “public employees,” provided, however, that chapter fifty-four of the New York City Charter [creating the Office of Collective Bargaining, the Board of Collective Bargaining, and the Board of Certification] and Administrative Code [NYCCBL] 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 be not applicable to the corporation, its officers and employees.

³ Unless otherwise indicated, the individual employees discussed in this decision testified at the hearing.

⁴ The North Bronx Network includes the Jacobi and North Central Bronx facilities. The South Manhattan Network includes the Coler-Goldwater, Bellevue, and Gouverneur facilities. The Central Brooklyn Network is composed of the Kings County, McKinney, and East New York facilities. The Southern Brooklyn/Staten Island Network includes the Coney Island and Sea View facilities.

increases and the applications to specific titles. The Union does not dispute that Maria Castro's labor relations duties make her confidential. The record supports a finding that Castro's duties make her position confidential. *See Assistant Deputy Wardens Ass'n*, Decision No. 11-95 at 20 (finding confidential a Deputy Warden whose duties included cost analysis of collective bargaining proposals).

Matthew Lee, a SMC Level I, also works in the Corporate Budget department in the Expense Budget division. He compiled information for the 2005 medical malpractice, debt service, and heat, light and power expenses. He recalculates base facility expense allocations and expense budgets when the revenue budget and corporate funding ratio models are modified. During collective bargaining negotiations, he participated in the preparation of the cost analysis of HHC offers and union demands. He was involved in salary expense projections for each union and each facility in the outlying years and calculating changes in some of the cost projections based on when the increases would begin, such as December versus September.

HHC contends that Lee provides cost analysis during collective bargaining negotiations and performs similar work to Castro. The Union argues that, although he testified that he costs out collective bargaining agreements, he did not list this as a job duty in his survey and responded "No" to survey questions regarding personnel responsibilities, confidential status, and policy formulation. We find that the position held by Lee is confidential because he does cost analysis during collective bargaining negotiations.

Arthur Marshall Jr., a SMC Level I, works in the Corporate Budget Office in the Budget Reporting and Support Services division. He did not testify. According to his survey, he maintains, updates and runs several PSER based programs. He works with the Assistant Director to project

collective bargaining costs for various titles using a SAS program. The SAS program report shows the anticipated personal services (“PS”) costs based on the collective bargaining agreements. In response to collective bargaining proposals, he projects proposed contract terms and highlights PS costs. He runs SAS programs to determine the specific employees affected by a negotiated work rule change. In projecting quarterly collective bargaining funding, he is privy to all collective bargaining proposals and programs each union member’s quarterly salary increase and the overall fiscal year PS cost. He attends budget meetings during which staff reductions and program terminations due to loss of grant funding and facility closings are discussed prior to implementation.

The Union argues that Marshall is not confidential because it is not clear that he spends a significant amount of time costing out contract proposals and his principal duties involving maintaining computer data programs. We find that the position held by Marshall is confidential because he is involved in projecting the costs of collective bargaining proposals.

Thomas Kennedy, a SMC Level I, works in Debt Finance/Corporate Reimbursement Services. During collective bargaining negotiations, the Senior Vice President of Finance/CFO of Finance has asked him to do incremental calculations above and below a salary percentage that HHC thought of proposing to determine the expense to the Corporation. Similarly, she asked him to calculate the cost of percentage increases requested by a union. He prepared over ten cost calculations during the last negotiation with District Council 37 and has done cost analysis on other union contracts. He has not been involved in the decision as to what proposals are accepted or offered.

HHC contends that Kennedy is managerial because he provides cost analysis during collective bargaining negotiations. According to the Union, he did not indicate how much time he

spends costing out contract proposals, and it does not appear to be a major portion of his job. At most, the Union finds him confidential. We find that the position held by Kennedy is confidential because he prepares cost calculations for senior management to use during collective bargaining negotiations.

Joseph Matthews, a SMC Level II, also works in Debt Finance/Corporate Reimbursement Services. He did not testify. According to his survey, he projects and monitors Medicaid rates for use in the corporate-wide budget for each facility. Facility expenses and budget values are based on his projections. During state budget negotiations, he attends meetings at which the financial impact of proposed budget cuts is discussed. Based on financial implications, he has recommended the opening or closing of services, which facility leadership accepted, and has recommended which budget negotiations should be pursued with officials of health organizations. He represented Bellevue Hospital and the Central Office in negotiations with the state concerning the implementation of the Traumatic Brain Injury unit.

According to the Union, although Matthews claimed to formulate policy, his survey does not indicate what policies he participated in formulating or how much time he spent doing so. Further, his work in Medicaid reimbursement does not involve confidential labor relations issues or collective bargaining. We find that the position held by Matthews is managerial. Recommending the opening or closing of services, he has a significant role in the process of formulating policy.

Michael DiBlasio, a SMC Level I, works in the Corporate Payroll Systems division of the Office of the Corporate Comptroller. He ensures compliance with federal, city and state regulations regarding payroll. He is the liaison between programmers and payroll system users, including the Labor Relations and Human Resources departments. For example, he prepared the specifications

for the programmers to produce reports regarding the cost of shift differentials, the number of heat days used, and the cost of heat days for the Labor Relations department to use during collective bargaining negotiations. He gives the information to the Assistant Director of Labor Relations. Similarly, he supplies information, such as overtime or accrual of annual leave, to the Labor Relations department for grievances. He is the chairperson on the magnetic medial conversion project, which involves converting the format in which payroll deduction information is received from magnetic media to an electronic format, and makes recommendations to his supervisor, the director of the department. He is the chairperson of the FICA refund project to ensure compliance with new federal regulations. Regarding direct deposit, he created the request for proposals to renew the contract for direct deposit services, made recommendations to his supervisor regarding to whom it should be offered, prepared a budget cost analysis to be submitted and approved by the Budget Department and the Board of Directors, coordinated implementation and training, created the corporate training policies and procedures, and coordinated with the vendors regarding the programming and the submission of payments. Regarding the transit benefit program, he recommended using only one address to comply with federal, state and city regulations and created a cost analysis of the budget for submission to the Budget Department for their approval. Unionized members of his staff have access to the same information that DiBlasio has.

According to HHC, DiBlasio is managerial and confidential because, as liaison between Labor Relations and the Corporate Payroll System, he processes specific grievance issues relating to the payroll system. The Union contends that his interaction with an Assistant Labor Relations Director is limited to preparing specifications for programming data for reports on the cost of shift differentials, that the same data is available to the unionized employees he supervises, and that the

projects he develops do not involve policy making. We find that the position held by DiBlasio is eligible for collective bargaining because he has a minimal role in collective bargaining negotiations and the processing of grievances. His role is limited to preparing the specifications for programmers to generate reports providing requested information regarding such information as the cost of shift differentials, the number of heat days used, and the cost of heat days, overtime or accrual of annual leave. Further, his creation of direct deposit training and his preparation of budget cost analysis for the direct deposit and the transit benefit projects is insufficient to establish a significant role in policy formulation as defined by the Taylor Law. He is involved in compliance and implementation of projects.

Sue Linda Saidel, a SMC Level I, works in the Corporate Comptroller's Office in the Cash Management division. She has written authority to give directives to brokers and invests between 200 and 250 million dollars per day in order to fund liabilities for the day. She attended meetings with the CFO, the Comptroller, and the facilities' CFOs regarding the selection of a financial advisor when HHC issued debt bonds. She wrote a synopsis of the financial advisors' proposals for the Executive Assistant of the Senior Vice President and was one of the people rating the underwriters. She made a recommendation by assigning one financial advisor the highest point rating. Similarly, on the selection committee with the Comptroller and CFOs for the last bond underwriting, she reviewed the proposals and made recommendations via her ratings of the vendors. She attends meetings regarding general ledger issues for bonds when they close because her schedules are the basis of their debt and financial statements. She also rates vendors for financial stability.

HHC contends that Saidel has a significant role in policy making because she is akin to an expert advisor, invests \$200-250 million every day, deals with three brokerage funds, and moves

money from corporate accounts to make investments. The Union argues that she not managerial and/or confidential. We find that the position held by Saidel is managerial as she has a significant role in policy formulation. Along with the CFO, the Comptroller and facilities' CFOs, she is on committees selecting bond underwriting vendors. In addition, she has considerable discretion in determining HHC's investments. She participates in the process of determining the methods by which HHC achieves its goal of obtaining sufficient funding.

Bonnie Dermack, Rosanna Maglione, and Jewel Pilgrim are SMCs Level I, work in the General Accounting division of the Corporate Comptroller's Office and report to the same Director. Dermack allocates non-cash expenses, which are expenses other agencies pay HHC as a tax levy, to facilities based on her estimates from actual figures. She also analyzes W-2C figures to be submitted to the IRS, allocates unemployment charges to all facilities, and allocates expenses on hardware and software contracts to the facilities.

Maglione, in preparing 1099 tax forms, receives a list of the amounts to be paid to employees and former employees as a result of lawsuits or settlements. She also bills unions who rent space at HHC.

Pilgrim prepares a quarterly report for the New York State Department of Labor listing all the active employees and total wages paid. She prepares invoices to 12 to 15 unions requesting reimbursement of the amount of FICA/Medicare taxes HHC has paid on their behalf. She also prepares weekly reports regarding the amount of employee salary deductions to be paid to health carriers.

According to HHC, Dermack is managerial because she formulates policy by allocating non-cash expenses to facilities. The Union argues that Dermack, Maglione and Pilgrim are all clearly

eligible. We find that the positions held by Dermack, Maglione and Pilgrim are eligible. They are involved in accounting and do not have a significant role in labor relations or policy formulation. Contrary to HHC's assertion, it is not merely the allocation of funds that exempted certain Project Planners employed at the Office of the Mayor; rather, it was their participation in the process of selecting the City's objectives. *District Council 37, Decision No. 4-97*. Accordingly, Dermack's allocation of non-cash expenses is insufficient to exclude her from collective bargaining. Although Maglione receives information concerning the amount of payment resulting from lawsuits and settlements, some of which may be for union members, she does not have a significant involvement in labor relations. Similarly, Pilgrim's preparation of invoices sent to unions for reimbursement of taxes paid by HHC does not make her ineligible for collective bargaining.

Mahmoud Elsayah, a SMC Level I, works in the Fixed Asset Accounting division of the Office of the Corporate Comptroller. He produces a quarterly report of assets and depreciation for all the facilities that is sent up the chain of command and provides information regarding assets to the Budget Office.

Satinath Chattopadhyay, a SMC Level I, works in the Cash Receipts/Restricted Funds division of the Office of the Corporate Comptroller. He prepares a weekly Medicaid receipt report that allocates money to hospitals based on their billings, a bi-weekly cash report of money collected from the hospitals, and reviews the invoices of a company that provides billing services to the hospitals.

The Union argues that Elsayah and Chattopadhyay are clearly eligible. We find that their positions are eligible because they do not have a significant role in labor relations, personnel administration, or policy formulation.

Barry Skura, Jonathan Goldstein, Jeannie Ng, Zhaolin Liu, and Jayashri Nagaraja, who did not testify, are SMCs Level II, work in the Planning Unit of the Office of Corporate Planning and HIV Services, have identical position descriptions, and report to the Assistant Vice President of Planning.

Skura performs data analysis and research. For his supervisors, he prepared a report on prenatal care that looked at why there were discrepancies between the data system and the patients' medical reports and why individuals who received prenatal care chose to deliver elsewhere. He calculated how much the Corporation would make if they could keep the individuals who left for reasons within their control. The report was prepared at the behest of the Chairman of the Board of Directors because the Corporation reports regular statistical measures of its strategic plan progress. Skura attends his department's weekly staff meeting to receive updates on the Board of Directors' meetings and committee meetings.

Goldstein captures data regarding patient visits from the corporate database to create a resources book used to gather facility trends and prepare certificate of need applications. He was responsible for aggregating the number of discharges, which was used to determine how to size Coney Island Hospital's new building, and for reviewing the number of deliveries to determine if the modernization of labor and delivery rooms was a good investment. He has attended high-level meetings concerning various projects at different hospitals. At these meetings, he has recommended the number of beds needed or the expected number of outpatient visits. Once, he met directly with HHC's President regarding trends in admissions of individuals with asthma or diabetes. He regularly attends the monthly meeting of capital subcommittee of the Board of Directors as an observer and answers questions if his superiors are not present. At meetings regarding improvements to Jacobi's

new inpatient facility, he recommended against increasing the number of medicine and surgery beds since his data indicated that almost every hospital in the state is trying to reduce beds. The beds were increased, but not as much as initially desired.

Ng is the liaison with the Mayor's Office of Operations and prepares the Mayor's Management Report, which documents the hospitals' performance indicators, such as the wait time to schedule a mammography, compares them to national standards, and explains any discrepancies. In compiling data and preparing the narrative, she attends meetings with the Senior Vice President of her department, Medical and Professional Affairs personnel and sometimes Behavioral Health personnel to analyze certain indicators, determine the best way to capture what they want to measure, and collaborate on the phrasing of sensitive subjects. Regarding a colonoscopy initiative, she made a recommendation to lower the age of the patients whose office visits they would analyze. An analysis of raw data was made on her recommendation, but the strategic plan had not been determined at the time of her testimony. In addition, she prepares maps for the Senior Vice President of Intergovernmental Relations with information such as the location of primary and secondary services areas. For example, prior to a public announcement that a clinic is closing, she would prepare a map of the travel distance and time to the next closest clinic. She helps with the analysis of the ways a clinic closing would affect patients and staff but is not involved in making the decision to close a clinic. Since she attends meetings regarding clinic closings and termination of facility services, she has prior knowledge of potential layoffs. As a support person assisting with Power Point presentations and distribution of materials, she attends meetings of the strategic planning committee, run by the Senior Vice President of Intergovernmental Relations and attended by HHC's President, Board of Directors and Senior Vice Presidents. Filling in for the Senior Assistant Vice

President, she has shared information regarding the patient profile at meetings regarding the utilization of a hospital.

Liu also does mapping projects that visualize data for use in marketing, analysis of competitors, and clinic closures. He attends some meetings to provide technical advice. At other meetings, he makes recommendations as to how to present data on a map most effectively. He is privy to clinic closing discussions before that information is made public. At weekly staff meetings, the staff is presented with projects, goals and strategies, some of which are politically sensitive and, therefore, confidential. He provides his ideas on how to present the data relating to these projects.

According to her survey, Nagaraja describes, obtains, and compiles information. She provides background analysis, data and other information necessary for policy formulation.

HHC contends that Skura, Goldstein, Ng and Liu have a significant role in policy making because they are akin to expert advisors and that they are confidential because, prior to an announcement to the public, they have access to information regarding the closure of clinics that has the potential to affect staffing. The Union argues that they are eligible because they are resource people who answered “No” to survey questions regarding labor relations, personnel responsibilities, confidential status, budget responsibilities, and policy formulation. Only Goldstein and Ng indicated that they make recommendations at high level meetings. We find that the positions held by Skura, Goldstein, Ng, Liu and Nagaraja are eligible because their role is primarily as resource people. They gather and analyze data for use by upper management but are not directly involved in making the decisions. *See District Council 37, Decision No. 4-97 at 37* (finding Project Planners in the Mayor’s Office of Medicaid Managed Care eligible for bargaining because their tasks are “more in the nature of gathering and analyzing data, or making reports and suggestions, used in the formulation of

policy”); *Local 621, SEIU*, Decision No. 7-92 (noting that formulation of policy “would not include one who simply engages in research or in the collection of data necessary for the development of a policy proposal”). Although Ng and Liu have prior knowledge of clinic closures and potential layoffs, their inclusion in collective bargaining would not lead to conflicts of interest inimical to the collective bargaining process and the full and fair representation of the employer’s interest.

Joan Manuel Monserrate, a SMC Level II, works in the HIV Services Unit of the Office of Corporate Planning and HIV Services. He oversees 21 million dollars of HIV grant funds. For Ryan White grants and state grants, he reviews interactions between the funders and the facilities. When Intra-City grants are renewed, he prepares the budgets with the program administrators and discusses how the funds will be reallocated among the facilities with program administrators and the facilities’ fiscal personnel. For example, when funds are not spent at one hospital, they will reallocate funds to another hospital, with the approval of his supervisor and her supervisor, the Senior Assistant Vice President. He is one of the main coordinators of the Quality Improvement Network, comprised of teams from all facilities that provide HIV services. He participates in different subgroups that plan what will be discussed at the Quality Improvement Network’s quarterly meetings and conference calls with the programs regarding their progress toward quality improvement. As a team, they look to the New York State AIDS Institute and decide on what projects the Quality Improvement Network could embark and the types of issues that should be brought up to the group. The hospitals decide what projects they want to work on, and the team, interpreting state guidelines, works with the hospitals on how to approach those projects. At the request of the Senior Assistant Vice President, Monserrate did comprehensive research regarding a rapid HIV testing device and recommended its use. As a pilot program, the device was used at five hospitals. He researched which five hospitals

would be the best for the pilot program and presented the information to his supervisors, who made the decision. He is assessing whether it could be implemented throughout the Corporation.

According to HHC, Monserrate is managerial because he formulates policy by making recommendations to the Senior Assistant Vice President regarding allocation of funds, monitoring the use of funds, having authority to transfer funds between facilities, and being akin to an expert advisor. The Union argues that he is involved with the procedures for carrying out policy rather than the formulation of policy. We find that the position held by Monserrate is eligible. He is primarily a resource person. He makes recommendations, but the decisions are made by his supervisor and that person's supervisor. Although he has budgetary responsibilities relating to certain grants, these do not rise to the level of formulating policy. The evidence does not indicate that, in reallocating funds between facilities, he is deciding which programs should be funded. Rather he is addressing underutilization of funds in a facility. While he is part of the team that decides which issues to present to the Quality Improvement Network, the recommendations follow guidelines from the New York State AIDS Institute, the decision regarding which projects to select are made by the facilities, and any discretion his team exercises concerns the implementation. The record does not indicate that his role is as extensive as that of the Project Planners employed in the Mayor's Office of HIV Health and Human Services Planning Council, who make recommendations regarding the setting of objectives and try to persuade the decision-makers to reconsider if they disagree. *See District Council 37, Decision No. 4-97* (finding Project Planners in certain units of the Mayor's Office, including the Office of HIV Health and Human Services Planning Council, to be managerial).

Edith Brown, a SMC Level I, is the Assistant Director in charge of Special Projects/Events and Contract Compliance in the Affirmative Action/Equal Employment Opportunity ("EEO")

department. She plans special events, such as the holiday party and the annual multi-cultural event for HHC employees. In connection with these corporate events, she meets with the HHC President's Chief of Staff and other members of senior management. She organizes the events, plans the budget, and may make recommendations regarding corporate sponsorship. Three or four times a year, she works with contractors to ensure their compliance with EEO and affirmative action procedures. While she answer phones and passes along EEO information, she is not involved with individual EEO complaints.

HHC contends that Brown has a significant role in policy making because she is akin to an expert advisor and plans the budget for the special events that she organizes. The Union argues that she has no policy or labor relations functions and answered "No" to survey questions regarding labor relations, personnel responsibilities, confidential status, budget responsibilities, and policy formulation. She did indicate that she made recommendations at high level meetings. We find that the position held by Brown is eligible. As an event planner and liaison with the Mayor's Office, she does not have a significant role in the formulation of policy. Reviewing contractors compliance with EEO regulations and answering EEO calls involve minimal personnel responsibilities.

Karen Rosen, a SMC Level II, works in Contract Administration and Control. She is responsible for operating the Corporation's VENDEX system, which performs integrity checks on vendors who propose to do business with HHC. She shares office space with the Office of Labor Relations and sits close to the Secretary of Labor Relations. She has pulled labor relation faxes from the fax machine, scanned them to see to whom they are addressed, and has overheard conversations regarding labor relations, including the names of individuals scheduled for grievance hearings.

HHC contends that Rosen is confidential because, due to the close proximity of her desk to Central Office's Labor Relations Office, she overhears conversations regarding labor relations cases and issues and sometimes distributes labor relations faxes. The Union argues that she is not confidential merely because she occasionally pulls faxes addressed to Labor Relations out of the machine and overhears the names of individuals scheduled for hearings. We find that the position held by Rosen is eligible. Although her proximity to the Labor Relations Office may cause her to overhear conversations and scan faxes, she does not have any responsibilities in labor relations. As a member of a different department, she does not work in a confidential capacity to a manager involved in labor relations.

Susan Wright, a SMC Level II, works in Workforce Development division of the Human Resources and Workforce Development Department. She attends between one and three labor/management meetings per year regarding training plans and initiatives. She presents proposed training initiatives to union representatives and receives proposals for specific training from them. Two or three times a year, she attends the monthly Human Resources Directors Council at which corporate-wide human resources and labor relations issues are discussed. At these meetings, she provides information and solicits input on training. Along with the Assistant Vice President for Human Resources, facilities' Human Resources Directors, Labor Relations, Budget and Legal, she was involved in updating the corporate operating procedures a few years ago. She was part of the team that formulated and recommended the policies regarding release time, and currently resolves these issues. She was involved with negotiating a vendor agreement with District Council 37 regarding the Workplace Learning Center, a training collaboration between HHC and District Council 37. She discussed the scope of services to be provided, the budget and staffing

determinations, and the learning center's structure and was responsible for developing the vendor contract documents. A few years ago, she developed the scope and contract for corporate-wide training for Special Officers. She is working on a grant to develop career ladder programs for nurses and is working with Cornell University to develop human resources and labor relations training for HHC employees. It was not her decision to create the career ladder nursing program, and she did not determine the need for the Cornell training. She has recommended that they consult various vendors or schools to assist in implementing the nursing programs. She prepares the budget for her division.

HHC asserts that Wright is managerial and/or confidential because she works in Central Office's Human Resources Department and attends meetings of the Human Resources Directors Council, which the Assistant Vice President of Human Resources and the Assistant Vice President for Labor Relations also attend. According to the Union, she is eligible because, while she meets with unions regarding their training proposals, she does not decide what will be offered. We find that the position held by Wright is managerial because, in working with corporate-wide training programs, she has a significant role in labor relations and personnel. She regularly attends labor/management meetings as a management representative. She attends HHC's monthly meetings of the Human Resources Directors Council irregularly; however, she was part of the team that recommended policies on release time and resolves release time issues on the behalf of management as they arise.

Mary Ann Short, a SMC Level I, is the Office Manager for the Facilities Development department. She assists the Senior Vice President of Facilities Development and is charge of allocating all departmental expenses. When notified that her department is over budget, she reviews

a print-out of other than personnel services (“OTPS”) and determines whether contractor fees have been billed to the department’s personal cost center “by accident” and whether such fees should be charged to the facilities or to the capital budget instead.

According to HHC, Short is managerial because she formulates policy by allocating expenses for the OTPS budget and determining whether something is charged to a facility or the capital budget. The Union argues that she performs routine accounting work with no discretion. We find that the position held by Short is eligible. She allocates expenses among from the Facilities Development department’s personal budget to the facilities’ budgets or capital budgets to correct errors. She does not have a significant role in policy making or budget making.

Waltraud Fierman, a SMC Level I, is the Director of Construction Administration in the Facilities Development department. She reviews the insurance submittals from contractors to see if they comply with contractual requirements. She makes recommendations to the General Counsel regarding whether a contractor should be granted an exception to the contractual insurance requirements. As an HHC representative, she attends the Prevailing Wage Council, a forum bringing together various city agencies, unions, and IRS representatives, to discuss prevailing wage issues. She has been working with the Director of Capital Budget regarding community board requests for such things as additional staffing, new clinics in under-served areas, and an Intelli-speech system to automate calls to a hospital. She looks to see if a specific request was made during the last year and if there were any changes that would merit a different response. For new requests, she checks to see if they are already in the capital budget and, if not, asks for the network’s opinion of the request. Based on the networks’ recommendation, she will discuss HHC’s response with the Capital Budget Director. She has prepared capital budget proposals to obtain New York City Office of Management

and Budget approval, which involved checking whether money was allocated for those expenditures in the capital budget and paying attention to financial and debt projections, but she does not make recommendations concerning which projects are selected as the facilities determine what they need. She testified that she will be involved in developing the capital plan and the allocation of funds in the future.

According to HHC, Fierman formulates policy because, following training, she will be responsible for allocating funds for capital budget projects and she is akin to an expert advisor. The Union argues that she does not make recommendations on proposed projects. We find that the position held by Fierman is eligible because, currently, she does not have a significant role in the formulation of policy. For example, she does not make recommendations regarding which projects receive funding.

Dion Christopher Wilson, a SMC Level I, is the Acting Director of Real Estate in the Facilities Development department. In addition to meeting with supervisors in his department, he meets with the Senior Vice President for Planning and Intergovernmental Affairs to provide facts concerning potential development projects, such as long-term leases to organizations that will provide senior housing or a research center. He is the interface between the hospital, developers, and HHC's real estate consultant. Along with the Legal Department, he is involved in drafting leases, and he prepares a summary of the lease's terms to be approved by the Board of Directors. He has made recommendations to Senior Vice Presidents, such as the appropriate sections of the zoning resolution that would, based upon his research, apply to a mixed use facility. According to his survey, he evaluates real estate transactions and makes recommendations on actions, policy, and procedure to maximize its organizational value.

HHC contends that Wilson has a significant role in policy making because he is akin to an expert advisor. The Union argues that he has an informational role at meetings. We find that the position held by Wilson is eligible. Although he is an expert in real estate transactions, he does not have a significant role in the formulation of policy. “[H]igh level supervisory or professional or expert technical personnel must be distinguished from those who perform functions such as contemplated in the Taylor Law definition of managerial employees in Section 201.7(a).” *District Council 37*, Decision No. 34-81 at 33; *see Local 1180, Communications Workers of America*, Decision No. 3-90 (finding that employees, who are informed of new objectives and asked to prepare procedures for achieving them and who attend conferences for the purpose of providing technical advice, are not an essential link in the formulation of policy).

Alex Scoufaras, the Assistant Vice President for the Office of Internal Audits testified regarding the responsibilities of the SMCs Level I working in his department: Terrance Parris, Alan Miller, and Dimitrios Galanopoulos. Galanopoulos and Miller audit construction projects, which involves ensuring that the materials on the job are those agreed to, that change orders are properly processed, and that the contractor is properly insured and provides proof of the work done. Parris audits almost all other operations of the corporation, such as procurement, accounts payable, and payroll.

We find that the positions held by auditors Parris, Miller and Galanopoulos are eligible because they do not have significant involvement in labor relations or policy formulation. *See Civil Service Technical Guild, Local 375*, Decision No. 8-86 at 80 (finding an employee conducting similar auditing work to be eligible for collective bargaining).

Of the SMCs at the Central Office who submitted surveys but did not testify, some work in Information Services, Information Technology, and Support Services and perform tasks in areas such as database security, batch jobs, application development, clinical systems interface, departmental budget reports, departmental invoices, technical support, technical resources production control, data center operations, and contract management. SMCs employed in the Early Intervention Program perform tasks such as monitoring providers' compliance with regulations, reviewing proposals for contracts, acting as a consultant at focus groups, supervising office operations, analyzing statistical data, maintaining computer applications, preparing reports, processing contracts, providing technical assistance, preparing contract solicitation documents, and attending regional meetings to keep up to date on policies. SMCs in Revenue Management collect data, generate reports, research state and federal guidelines for billing, and issue directives to insure compliance. In the Office of Intergovernmental Relations, SMCs act as community liaisons, attend Community Advisory Board meetings, produce reports, and represent HHC at community events. In the Office of Behavioral Health, SMCs assist chemical dependency programs with an internal data collection mechanism, act as liaisons to the state Office of Alcoholism and Substance Abuse Services, audit departmental OTPS spreadsheets, prepare statistical analysis and reports regarding grant funding, and prepare spreadsheets for the Assisted Outpatient Treatment Programs. In the Office of Professional Services and Affiliations, SMCs develop and maintain databases, generate reports and directories, monitor contractual agreements, analyze performance indicators, review Affiliate payment documents, and develop and revise forms. In Materials Management, SMCs manage OTPS inpatient and outpatient pharmacy contracts, recommend drugs that could be used, and direct the Corporate Food Program. In Facilities Development, the SMCs prepare estimates, review work orders, prepare bid evaluations,

negotiate change orders, manage the preparation of construction and service contract documents, process construction contracts, and assist in prequalification of contractors. In the Cash Management, Fixed Assets Accounting, Financial Accounting, Financial Reporting, and Corporate Payroll Operations divisions of the Corporate Comptroller's Office, SMCs process payroll transactions, write data programs, and prepare corporate bank reconciliations, ledger entries, weekly cash flow reports, monthly fixed asset cost reconciliations, and quarterly accounts receivable reports. SMCs in Corporate Reimbursement Services, the Office of Health Care Quality and Clinical Services, and the Community Health Partnership Unit of the Office of Corporate Planning and HIV Services perform duties such as analysis and programming, coordinating activities and events related to the Chronic Disease Collaborative, and facilitating the flow of information with the state Department of Health.

The surveys of those SMCs who did not testify indicate that their various job duties do not include significant involvement in labor relations, personnel administration, or the formulation of policy. Therefore, we find their positions eligible for collective bargaining.

Coler-Goldwater Specialty Hospital and Nursing Facility

Julia Boynton, a SMC Level I, is the Chief of Staff for the Administration department. She did not testify. According to her survey, she assists the Chief Executive Officer ("CEO") (Executive Director), who is involved in collective bargaining and personnel administration. She produces confidential memos and correspondence in these areas. The Union concedes that she is confidential because she assists the Executive Director in personnel administration and collective bargaining. The record supports that concession.

Jon Dongell, a SMC Level I, is the Administrator of Admissions, responsible for the Admissions Departments at the Coler and Goldwater campuses. Dongell testified that he develops new procedures and implements new policies and protocols, when he deems necessary, within his department or in conjunction with other departments. He decides if a policy needs to be implemented or changed, consults other departments that might be affected, and submits the policy and procedure to his supervisor, the Chief Operations Officer (“COO”), who approves it and takes it to the executive board for final approval. Once the “policy and procedure” is approved by upper management, it is added to the policy and procedure manual, and Dongell educates his staff on compliance. He has revised eight policies and procedures in the policy and procedure manual and implemented others. For example, Dongell developed a “policy and procedure” regarding how patient referrals are accepted and who contacts physicians in order to avoid too many individuals working on the same referral and to ensure that clerical employees are not addressing medical issues. He is also responsible for making sure that all the department’s policies and procedures comply with all state and federal regulations. To comply with regulations regarding refusals to take patients, he developed a “policy and procedure” to track why certain patients were refused and others were accepted. In addition, he changed how late pre-planned admissions are handled. Instead of having nurses process admissions after his department closed, he had his clerical staff, along with the Information Management Department, input patient data and prepare an admission package for the nurses to utilize. He also developed a procedure regarding the distribution of medical records to patients to prevent problems that occurred under the prior procedure. After a trial, the new procedure was adopted facility-wide. He sits on the performance improvement, information management, and utilization management committees, among others. The purpose of the committees varies, but can

include establishing policy and procedure. He is responsible for the budget for the Admissions Department, for allocating how money is spent in his department, and for estimating budget needs in the nursing home and the hospital for the next year by projecting the number of patients or residents at a given time, based on factors such as population demographics and health care changes. This information, such as the number of referrals, the number of denials and the types of patients, is provided to the COO and the CFO, who ultimately decide the departmental budgets. He meets regularly with the COO and other department heads but does not attend the senior management meetings of Coler-Goldwater's CEO. Sixty percent of his time is spent handling patient referrals and supervising his staff.

HHC argues that Dongell is managerial because he wrote the policy on accepting referrals and prepares his departmental budget. OSA argues that he is eligible because he does not attend senior staff meetings, his recommendations need to be approved by his supervisor and the CEO, and most of his time is spent administering his department. We find that the position held by Dongell is managerial because he has a regular and significant role in policy formulation. He decides when policy and procedures need to be created or modified and has created eight new policies and procedures. Although some of his ideas were more procedural in nature, for example, refining how medical records are distributed to patients, he has had significant involvement in several policy decisions. He decided that clerical employees should not be involved in medical issues and that records were required regarding who was refused admittance and why. His role in projecting the number of patients expected in the next fiscal year has a significant impact on the budget for the nursing home and hospital divisions, not just his department.

Dongell supervises Wendy Oppenheim, the Director of Admissions and also a SMC Level I. She spends one or two hours a month on policy and procedure. She testified that she drafted the late admission policy explaining the process whereby the facility accepts admissions after 5 p.m. On the recommendation of a committee, she decided to write a policy and procedure on census reconciliation, regarding daily verification of the number of actual patients/residents in the facility. On the recommendation of the monthly admission process committee, she wrote the name plate policy, color coding the name plate stamped on medical records based on the location of the patient and the patient's status, for example, as a managed care patient. At the time of the hearing, both policies were being forwarded to the medical executive committee because they involve other departments. As a member of the quarterly performance improvement for clinical services committee, she establishes the indicators she monitors, gathers data, writes a report and presents it to the committee. When a dietary issue was raised, she made a recommendation on ways to better handle patients' significant weight loss. She attends the Executive Director's quarterly senior management meetings. Along with the physicians, she decides who may be admitted consistent with state and federal guidelines and regulations as well as the facility mission. For example, the guidelines may require a patient to be on AIDS medication, but based on her evaluation of the reasons the patient was not taking the medicine and the patient's potential compliance at the facility, she may admit the patient. If there is a seriously ill patient, she can decide that patient should not be admitted after 5 p.m. but should be admitted the following day.

HHC argues that Oppenheim is managerial because she worked on and/or wrote policies concerning late admissions, census reconciliation, and name plates. According to the Union, she writes procedures but the record does not show that she is involved in policy making at the meetings

she attends. She does not decide which patients should be admitted; rather, she implements those decisions. We find that the position held by Oppenheim is eligible. Unlike her supervisor, Dongell, her role in policy making is limited. She follows up on committee instructions and her “policies” seem more procedural, such as color coding name plates. While she has discretion in implementing the guidelines regarding admission of patients, her role in policy formulation is neither regular nor significant.

Stanley Smith, a SMC Level I, is the Director of Hospital Police. He receives phone calls from the Labor Relations or Personnel departments informing him of problems that may require his intervention. He has conducted confidential investigations and relayed the findings to Labor Relations, which has brought disciplinary charges as a result. Depending on the sensitivity of the investigation, either he investigates or he has a unionized officer investigate. He apprises Risk Management of issues his office sees on patrol, including issues concerning HHC employees. In regard to the departmental budget, he makes recommendations based on departmental needs, confers with his senior administrator, and presents his request to the budget committee. He redrafted a policy on the process of issuing keys and distributed it to the directors of other departments for their input. An individual must submit a key request, and the hospital police will investigate whether the individual was issued that key before. If a key is lost, a lost key report is prepared, and if the key is sensitive, such as a key to a medication chart, appropriate individuals are notified. He also drafted or revised the VIP policy, the media policy, and the smoking control policy, all of which required the Executive Director’s approval. In anticipation of a Joint Commission on Accreditation of Healthcare Organizations (“Joint Commission”) requirement, Smith created a pediatric policy, which includes a special pass system to track entrance into the unit with mentally challenged children and

which is pending final approval. He is in the process of revising the bomb threat policy, which previously only addressed bomb threat phone calls, to provide instructions if officers come across a package, such as when to cordon off the area and whom to call.

HHC argues that Smith is managerial because he wrote the key, VIP, media, smoking control, pediatric, and bomb policies, is akin to an expert advisor, prepares the budget for his department and presents it to the budget committee. The Union argues that he is eligible because he does not recommend charges when he investigates situations that might lead to employee discipline. The policies he rewrites or institutes must be approved by higher-ups and go through many comments and revisions. We find that the position held by Smith is eligible for collective bargaining. The “policies” he has written are procedural in nature. Making need-based recommendations for his departmental budget is insufficient to establish managerial status. His involvement in investigating employees and being on call for potential conflicts is not a significant role in labor relations or personnel.

Carmen Clavell, a SMC Level I, is the Director of Respiratory Care. She represents her department at labor/management meetings and arbitrations. She has written all the policies for all clinical practices within her department, on subjects such as how to place ventilators on patients, how to wean patients off ventilators, how to draw arterial blood gases from patients, and how to run the blood gas laboratory. She has also written policies, such as how to suction a patient, that involve medicine and nursing disciplines, after consulting with the heads of those departments after she saw the need to be specific about the role of the Respiratory Therapy department in the procedure. She makes recommendations at monthly meetings regarding, *inter alia*, patient care, salary structure of the department, and purchase of equipment to improve care. She develops the budget for her

department. The Union concedes that she is managerial. The record supports that concession. Her policies regarding clinical care directly further the mission of HHC.

Rolando Caldea and Leithland Tulloch work in the Financial Management Department. Caldea, a SMC Level II, handles the day-to-day operations of the department. He reports directly to the CFO, who handles the day-to-day revenue. Following meetings with department managers to discuss their needs, Caldea analyzes the aggregate sum given to him by the Budget Director, whom he supervises. Based on his analysis, he makes recommendations to the CFO, who decides whether cost reductions are necessary and how much to set aside for fringe and mid-year budget modifications. Decisions, such as what assets are purchased, are made by the Executive Director or the COO. Regarding capital budgeting, which is done on a network level, Caldea recommends the aggregate amount that is available for allocation. In the CFO's absence, he attends meetings with Central Office, other agencies, and the facilities' senior staff. In meeting with the facilities' senior staff, he provides information about the budget and makes recommendations regarding intangibles, such as fringe and regulatory fees, that senior staff need to include in their budget. He does not attend the monthly senior staff meetings held by Executive Director of Coler-Goldwater. He makes recommendations such as moving money from fixed assets to cover nursing costs.

Tulloch, a SMC Level I, is the Budget Director reporting to Caldea. Along with Caldea, he meets with facility department heads to develop departmental budgets. Based on fund availability and spending patterns, Tulloch and Caldea make recommendations regarding the allocation of the money received from Central Office among the departments. Recommendations are made to the CFO, the COO, the Executive Director and other senior staff who make the final decision.

HHC contends that Caldea and Tulloch have a significant role in policy making because they are akin to expert advisors, Caldea formulates the budget for Coler-Goldwater and Tulloch formulates departmental budgets. The Union argues that Caldea's budget-related duties appear to be of a technical or routine nature. His recommendations are not always accepted. According to the Union, Tulloch has some discretion in allocating the OTPS budget. He negotiates with various services within the hospital regarding the OTPS budget. But if they cannot agree, the decision is made above him. He does not attend executive meetings and answered "No" to survey questions regarding labor relations, personnel responsibilities, and policy formulation. We find that the positions held by Caldea and Tulloch are eligible. They make recommendations for the allocation of funds, but the budget decisions are made by the CFO or above.

Richard Elrose, a SMC Level I, is the Director of Biomedical Engineering for the Coler-Goldwater and Gouverneur facilities. He writes internal and external policies and procedures for all the medical equipment in the facility, such as what to buy, how to purchase it, how to service it, how to inspect it, and how to train staff to use it. The policies address all medical devices, ranging from ventilators, life support equipment, defibrillators, diagnostic equipment, laboratory equipment, monitoring equipment, and treatment equipment to support equipment, such as water baths and patient lifts. Internal policies are just for his department. External policies are distributed throughout the institution and go into the administrative manual. For example, he rewrote the external policies regarding purchasing, testing, and repairing medical equipment to better meet the Joint Commission standards. In purchasing equipment, he contacts vendors to set up demonstrations, sets up clinical trials of the equipment, gets input from the staff who use the equipment, and makes recommendations based on the pros and cons of the equipment, including the

servicing of the equipment, to the Senior Associate Executive Director. Using this process, he is working on replacing the vital signs monitors and will have a role in deciding which model to purchase. He also rewrote Gouverneur's policy for identifying, evaluating, and taking inventory of clinical equipment to set forth the procedures for the evaluations that the Joint Commission requires be based on maintenance requirements, the use of the equipment, the risk of injury to patients and staff, and the incident history. The policy defines how he ranked the risk of all the equipment in the facility. He also wrote an internal guideline explaining the steps for creating work orders for equipment maintenance.

HHC argues that Elrose is managerial because he wrote the policy for medical equipment. According to the Union, he writes policies and procedures for his office that conform to state standards and are circulated widely prior to being adopted. The Union argues that he is an expert, but not a manager. We find that the position held by Elrose is managerial due to his regular and active participation in the process of formulating medical equipment policies. He has an integral role in determining which medical equipment, such as vital signs monitors, is purchased. His evaluations of the risk criteria of medical equipment determine how medical equipment is maintained.

Michelle Trummer, a SMC Level II, is the Director of the Medical Staff office, which is responsible for credentialing physicians when initially appointed and when reappointed every two years. In conjunction with the credentials committee, which consists of all chiefs of service and the Medical Director, she was directly involved in revising the credentialing process to ensure that it reflects any changes in the Joint Commission standards of state health code law. Following discussions with the credentials committee and the forms committee, she drafted an explanation of the differences between the categories of continuing medical education required at reappointment

time. She also identified the need for and drafted policies on access to the credential files and inclusion of rebuttals in the credential files. Her draft of a policy on rebuttal was considered by the credentials committee. As a member of the bylaws committee and chair of the ad hoc medical staff standard committee, she compared the bylaws to the Joint Commission standards and state health code regulations to see where changes were necessary. She then drafted a disaster credentials policy and a privileging policy, both of which were presented to the credentials committee. She also identified the need for credentialing outside physicians performing independent medical exams in the facility and drafted a policy requiring coordination with risk management. Due to changes in the Joint Commission standard requiring physician privileges to be setting specific, she is currently writing a revised policy on privileges.

HHC argues that Trummer is managerial because she worked on and/or wrote various policies regarding credentialing physicians, continuing education for doctors, access to doctors' credentialing files, doctors' rights to add information to their file, disasters, and changes to bylaws. According to the Union, she is a member of a committee that writes procedures to implement policy. We find that the position held by Trummer is managerial. As a member of the committees that create policies regarding physician credentialing and privileges, essential to a health care organization, she is a regular participant in the essential process that results in policy formulation.

Jocelyn Cesareo, a SMC Level II, is the Director of the Infection Control Program at the Coler-Goldwater and Gouverneur facilities. She provides the expertise on infection control and makes sure that the standards in place are consistent with the standards of practice and regulatory agencies. She wrote the policies on management of patients and residents with multiple drug resistant organisms, the cleaning of toys, the standard on plants and flowers in the units, and the use

of fingernails and artificial fingernails. She determines the need for new policies based on a continuous risk assessment. As a result of a new Joint Commission standard on bioterrorism, she is working on adding to the facility's emergency preparedness plan a policy on how to prepare for a sudden influx of infectious diseases, including providing isolation rooms, personal protective equipment, and prophylaxis drugs. She is also co-authoring a policy on the prevention of catheter-related intravascular infection. Medical staff are writing the clinical indications; she is responsible for determining the insertion technique, the product used to clean the skin, and the competency of the staff, as well as monitoring. In conjunction with the therapeutic recreation department, she is working on their policy concerning animals on premises to make sure it incorporates the infection control program's recommendations, such as requiring prior documentation regarding the dog's training and immunization history and limiting the areas where the dogs are allowed. She works with the Food and Nutrition department to make sure the dishwasher is set to 180 degrees, food is stored 6 inches above ground and rotated, cans are not dented, and staff does not have long fingernails. With regard to emergency infection outbreaks, such as influenza, she and her group are responsible for verifying that there is an outbreak, making sure that there is a standardized definition of the cases, performing risk assessment, and, if possible, identifying the pathogen. She writes recommendations regarding control measures for the chairman of the infection control committee, who has authority to implement emergency action. As a member of the infection control committee, her role is to provide expertise, such as risk assessment and recommendations. She also provides expert advice and recommendations to the environmental care committee, the nursing performance improvement committee, and the pneumonia prevention task force. She assesses the different levels of patient risk, analyzes various data, and works with different departments on preventive measures.

HHC argues that Cesareo is managerial because she worked on and/or wrote policies regarding the management of patients and residents with multiple drug resistant organisms, cleaning of toys, plants, and the use of artificial fingernails and is akin to an expert advisor. According to the Union, Cesareo issues policies to conform to federal, state, and city guidelines and, thus, is an expert not a policy maker. We find that the position held by Cesareo is managerial. She has a significant and regular role in establishing and maintaining infection control policies that further the mission of the agency.

Jocelyn Izzard, a SMC Level II, is the Director of Health Information Management. She wrote the 117 policies and procedures in her department's policy and procedure manual and the information management section in the facility's administrative policy and procedure manual. She identified a need to destroy confidential information consistent with federal laws and regulations and, after conferring with personnel from other departments regarding her proposals, wrote the policy regarding the destruction of confidential information for the administrative manual. Similarly, based on her knowledge of federal and state regulations, she authored a section of the administrative manual on medical record confidentiality including instructions on granting and documenting access and maintaining confidentiality. For the departmental manual, she authored the coding policy that explains how to process a chart, how to code it within federal and state regulations, how to key it into the system, the time frame when it comes to the department, and to whom to report deficiencies. She chairs the information management committee, the next of kin committee, the admissions process meeting, and the clinical information systems committee, which addresses the move toward electronic medical records. She is also vice chair of the administrative performance improvement committee. She is a member of, *inter alia*, the clinical record committee, the technical support

committee, the OBRA/Joint Commission meeting, the Health Information Management Directors' meetings, the utilization management committee, and the HIPAA meeting. Her role at the OBRA/Joint Commission meetings is to advise on conforming to rules and regulations. On invitation, she has attended the Board of Directors' meeting. Once in 2004, she presented a performance improvement project to the Board of Directors and offered a solution involving the creation of a form, continuing education, and the creation of an electronic system.

HHC argues that Izzard is managerial because she wrote 117 policies in her department's policy and procedure manual and policies in facility's administrative manual, including destruction of confidential information and confidentiality of medical records, and is akin to an expert advisor. According to the Union, she wrote the procedures on confidentiality and privacy, but did not create the underlying policies on those subjects. We find that the position held by Izzard is managerial. Although she adheres to federal and state laws and regulations, she regularly participates in the essential process of creating policy.

The remaining SMCs at Coler-Goldwater who submitted surveys, but did not testify, work in the Administration, Clinical Outcomes Research, and Patient Accounts departments. Their tasks include duties such as statistical analysis, clinical outcomes research, and monitoring departmental billing, collections, and accounts receivable. Because they do not have significant involvement in collective bargaining negotiations, personnel administration, or policy formulation, we find their positions eligible.

Bellevue Hospital Center

Kevin Roy, a SMC Level II, is the Director of Clinical Information Systems for the Information Services Department of the South Manhattan Hospital Network. He is in charge of

application development and design as well as training and support. He works with physician staff and senior administration to determine how electronic medical records can best be used. With the Director of Medical Records and the physician chairperson of the medical records committee, he decided to change the workflow for the processing of discharge summaries and operative reports, both of which are narrative summaries dictated by the physician or resident at Bellevue. Looking at legislation, they decided that the resident's signature was not needed and recommended to the medical record subcommittee that it not be used. Upon approval, they tested the workflow in Neurology and planned to expand the program into Psychiatry. He will draft the written policy. Regarding the policy and procedure for direct entry of clinical notes by physicians at Bellevue, he looks at the clinical needs, provided to him by the directors of service, the regulations, and the computer constraints of an online data entry form. He will offer multiple solutions and seek feedback from the directors of service. At Coler-Goldwater, he looks at needs and discusses strategic planning. At meetings with the Medical Director and chiefs of service, he has made recommendations such as how a physician may interact with the computer for creating orders and whether a pilot project should include physician order entry, consulting by nursing, or medication administration documentation. He attends meetings of the medical records subcommittee of the Medical Board, where the members discuss the computerization of medical records. He will analyze the benefits and disadvantages of computerizing particular documentation. The group will either accept his recommendation or, in rare cases, select from multiple options. He attends the clinical information systems steering committee meetings to evaluate strategic direction for the electronic medical records system. He will make recommendations that are discussed and voted on. He also attends meetings where he makes recommendations on the use of information systems for revenue

capture or charge capture. He has a role in the design of how the computer is to be used. He works with staff to change workflow practices and the way physicians document. He oversees another SMC and Coordinating Managers, who are currently not represented.

HHC argues that Roy is managerial because he worked on and/or wrote various policies and is akin to an expert advisor. The Union argues that he does not formulate policy even though he drafts policies and procedures. We find that the position held by Roy is eligible. He strategizes how to computerize medical records. He proposes solutions from which others decide. He improves how work is done and how information is captured electronically and used, but he does not have a significant role in formulating policy regarding the mission of the agency.

Imogene Drakes, a SMC Level I, is the Assistant Director of Quality Management. Her division improves the process by which the hospital provides information to the Joint Commission. If an incident triggers a need to have a Joint Commission response, Drakes attends a team meeting with the Director of Quality Management, the Associate Executive Director of Clinical Management, the Director of Human Resources, and the employee's department head regarding whether to terminate the employee and what response to give the Joint Commission regarding the disciplinary action and improvements made to prevent a reoccurrence. Many decisions are not punitive; however, she will hear any decision being made to discipline or terminate the employee. Her role is to listen and make suggestions on how to resolve the issue that lead to the incident. For example, at a meeting regarding an employee who had a gun in his locker, she gave input on ways to improve security. In addition, she wrote a departmental "policy" approved by the Director of Pathology regarding laboratory samples going between Bellevue and New York University. Based on knowledge of the Joint Commission's regulations, she "makes recommendations" at the hospital's

pre-board meetings by, together with her department, placing an issue on the agenda. She then listens to the department heads' responses and evaluates whether additional meetings on the issue are needed.

HHC argues that Drakes is managerial because she worked on and/or wrote the policy on lab samples sent between New York University and Bellevue and is an expert advisor. According to the Union, Drakes is eligible because she does not spend a substantial amount of time on managerial or confidential duties. In preparing responses to the Joint Commission, she attends meetings where discipline is discussed. She rarely speaks in meeting with high level staff. She had only one example of a policy she contributed to. We find that the position held by Drakes is eligible as she does not have a significant role in the formulation of policy. She makes suggestions on how to improve processes and comply with regulations. She may be privy to discussions about employee discipline, but she is not involved in making that decision.

Ruth Simmons, a SMC Level I, is the Administrator of Operations for the Social Work department. In the mid-nineties, she wrote the procedures for the clothing department she supervises to conform to existing practices. She also wrote the procedures and forms for obtaining statistics for the department. In coordination with the Director of the Sexual Assault Program, she wrote the procedures from the time a survivor enters the emergency room to the survivor's departure and, in collaboration with the Coordinator for Domestic Violence, wrote their basic procedures. As required by the state, she reviews patient charts for compliance with state home care requirements and prepares a report for the hospital's quality board.

HHC argues that Simmons is managerial because she worked on and/or wrote policies regarding the clothing program and the procedures for the sexual assault and domestic violence

programs. According to the Union, she is neither managerial nor confidential. We find that the position held by Simmons is eligible. She has written procedures that conform to existing practices and reviews charts for compliance with state requirements.

Mary Suraci, a SMC Level I, is the Director of Managed Care and the Department of Transportation (“DOT”) Program in the Network Programs/Managed Care & CHCCDP Program department. She is the financial manager and project liaison for the Community Health Partnership Grant, which is to be used for programs and initiatives in four areas: worker retraining, technology to upgrade systems, primary care access, and managed care readiness. She reviews proposals against the guidelines of the grant and then meets with the Directors, the CFO, and the COO of Bellevue and Gouverneur hospitals to decide how they are going to spend the grant money. Central Office allocates funds among the facilities. She makes recommendations regarding the allocation of funds within her facility that adhere to the guidelines and that are “almost always” accepted. Once the initiatives are approved, she prepares finance reports and progress reports. She does not need approval to stop a project that is not successful or reallocate funds if an initiative is over budget. She has stopped a training program that was not well attended and whose materials did not provide the necessary information and has pulled funds from different initiatives to fund the building of the Center for Workplace Learning. She attends between one and three meetings per year with Central Office’s Corporate Planning and HIV Services regarding the grant. Since she handles the grant money, she was involved with the initial negotiations of the first contract with District Council 37 regarding the teachers that work at the Center for Workplace Learning. As Director of Managed Care Operations, she will review the policies and procedures manual to make sure it is updated, in preparation for the Joint Commission. She is also the Director of the DOT program, whose staff

examines disabled individuals and works to get them parking permits. In addition, she acts as a consultant to her supervisor, the COO of Bellevue, on budget decisions for his division. She does not attend the senior staff meetings run by the President of Bellevue.

HHC argues that Suraci is managerial because she formulates policy by revising the Managed Care Department policy and procedure manual, making decisions regarding grant money at Bellevue, and being akin to an expert advisor. The Union argues that she is eligible because she said “No” to survey questions regarding labor relations, confidentiality, and policy formulation. We find that the position held by Suraci is managerial. She is part of the team that decides how grant funds are used at Bellevue and Gouverneur hospitals. As such she is selecting the methods by which her facilities will achieve the grant objectives. As a further indication of her managerial status, she does not need approval to discontinue a program or reallocate funds to meet expenses.

The SMCs at Bellevue who submitted surveys but did not testify work in the Medical Director’s Office, the Psychology Department, the Case Management division of Quality Management, and the Information Services Department. Their duties include tasks such as managing the departmental budget, taking minutes, acting as special assistant to the Medical Director, supervising multi-cultural health psychology cases, processing appeals for Rehabilitation and Psychiatry, providing imaging systems support, training users in the use of clinical information systems, and maintaining user profiles. None have significant involvement in collective bargaining negotiations, the administration of collective bargaining agreements, personnel administration, or the formulation of policy. Therefore, we find their positions eligible.

Harlem Hospital Center

Glenn Hazell, a SMC Level I, works in the Training and Development Department. He does expense monitoring for the Community Health Partnership Grant, used for worker retraining, facility renovations, and additional clinic staff. He meets with his supervisor, the Associate Director for Training and Development, regarding the processing of paperwork, such as reimbursement for employees and requisition approvals. He attends annual meetings with Central Office's HIV Services and Grants Management. He prepares fiscal reports for the entire grant and progress reports on primary care and managed care. He supervises La'Shawn Williams, a SMC Level I, who works on the worker retraining initiatives and writes progress reports.

According to HHC, Hazell is managerial because he formulates policy by monitoring grant expenses. The Union argues that Hazell and Williams are clearly eligible. We find that Hazell and Williams are eligible. We do not find expense monitoring to rise to the level of policy formulation. Unlike Suraci, Hazell and Williams do not participate in the selection of programs to receive grant funds or have the discretion to stop a project.

Other SMCs at Harlem, who submitted surveys but did not testify, work in the Training and Development Department, the Finance/Reimbursement Division, Friends of Harlem Hospital, Managed Care, Hospital Information Systems, and Management Information Systems. A sample of their tasks include preparing statistical and graphical data reports, coordinating data management and data entry, preparing institutional cost reports, fund raising, supervising daily functions of the Managed Care department, working on the departmental budget, providing classroom and on-site training, providing statistical reports, maintaining and monitoring a database and files, upgrading and maintaining servers, and providing network access. While a few have supervisory responsibilities,

these SMCs do not have a significant role in collective bargaining negotiations, the administration of collective bargaining agreements, personnel administration, or the formulation of policy. Accordingly, their positions are eligible for collective bargaining.

Coney Island Hospital Center

Marie Soleyn, a SMC Level I, works in Hospital Information Systems/Telecommunications. She is the project manager for the computerization of the paper chart. The workflow process changes to accommodate computerization. For example, in computerizing the discharge order for patients, the physician no longer needs to write a prescription and carry it to the pharmacy. When computerization is requested, Soleyn either does the work herself or gets consultants or the system vendor to do it and monitors the progress. She examines and monitors the entire workflow process to make sure that workflow changes do not affect someone else's workflow. She meets with her counterparts at other facilities, who use the same system, and they decide how things should work.

HHC argues that Soleyn is managerial because she worked on the policy for the computerization of medical paper charts. According to the Union, she is clearly eligible. We find that, similar to Roy's position, Soleyn's position is eligible for collective bargaining. By computerizing medical charts, she changes the way workflow is performed but does not have a significant role in formulating policy.

Patricia Morafetis, a SMC Level I, is the Assistant Director of Medicine. She supervises the day-to-day administrative operations of the department. In regard to the quality assurance process, she gathers data, reviews information such as mortalities, follows up on HHC initiatives, and presents her analysis at monthly department meetings. Annually, she reviews the department's policies to see if everything is up-to-date and written clearly. Medical policies are determined by

the Medical Director. For the new hospitalist division, Morafetis drafted a policy regarding the process whereby non-salaried community physicians have their credentials checked, provide contact information, and receive photo identification, a physician number, a stamp for signing charts, a pre-employment physical, and an employee health chart as other physicians do. She has also contributed to other policies. For example, she is working with the non-physician Director of the Catherization Lab to change the policy on how quickly catherization lab reports are done. In addition, after meeting with the Medical Director, she petitions the Committee of Interns and Resident's Patient Care Trust Fund for money to be used for resident teaching or patient care equipment. She regularly meets with her service line manager, who is an Associate Executive Director.

HHC argues that Morafetis is managerial because she worked on and/or wrote the policy on community physician admissions and is akin to an expert advisor. The Union argues that she is eligible because she answered "No" to survey questions regarding labor relations and policy formulation, does not meet with senior staff, and, together with the Hospital's Director, wrote a procedure on how to identify certain physicians. According to the Union, her job description shows that she is an administrator. We find that the position held by Morafetis is eligible. She is involved with the creation and modification of procedures, but is not significantly involved in the creation of policy.

The other SMCs at Coney Island who submitted surveys, but did not testify, work in the Managed Care Office and the Case Management Department. They have duties such as acting as a clinical liaison regarding nursing concerns, implementing procedural changes, reviewing charts, justifying admissions and continued stays, reviewing blood transfusion slips and restraint orders, and

communicating with insurance companies. Their positions are eligible as they do have significant involvement in collective bargaining, personnel administration, or policy formulation.

Kings County Hospital Center

Anthony Sookram, a SMC Level I, is the COBRA Director for the Central Brooklyn Family Network. In conjunction with others at HHC and the New York State Department of Health AIDS Institute, he developed the policy and procedure manual for the COBRA program, which provides intensive case management to Medicaid-eligible HIV positive patients. For example, he wrote the security policy that provides guidelines on how to do a home visit; the finance policy that explains how to collect revenue, how to bill, and what services are billable or non-billable; and the daily operations, including the employees' responsibilities and to whom they report. Tailoring the four criteria handed down by the state to his network, he wrote the policy regarding patient eligibility. HHC gave him 25 bullet points on what needed to be included in the manual, such as a security policy and a home visits policy. He brought ideas to the table and another HHC employee would agree or disagree and tell him what needed to be developed. He reviews the policy and procedure manual every two to three years to make sure the policies are still in effect. When they started to get an influx of psychiatric patients, he decided to revise the security policy to provide that at least two people went on the first home visit.

HHC argues that Sookram is managerial because he worked on and/or wrote his department's policy and procedure manual and policies on security, finance, and daily operations. The Union argues that he complies with state guidelines and thus merely implements policy. We find that the position held by Sookram is managerial. Although guided by state and HHC requirements, he was an active participant in the creation of policies for his network's COBRA program. For example,

he created policies regarding which patients are eligible, how to conduct home visits, and how to bill for services.

The SMCs at Kings County who submitted surveys but did not testify work in Facilities Management/Design and perform tasks such as preparing requests for proposals for architectural and engineering consultant services, space planning, reviewing designs, and designing posters, flyers, and brochures. We find their positions eligible for collective bargaining as they do not have a major role in personnel administration, collective bargaining, or policy formulation.

North Bronx Healthcare Network

Cirino Lotta, a SMC Level I, is the Director of Construction for the Jacobi Medical Center and the North Central Bronx Hospital. Once the decision is made to build or renovate a building, plans are drawn, either in-house or by consultants, and approved by his supervisor. Either his group or consultants will prepare a feasibility study and blueprints before inviting contractors to bid on the job. He and his supervisor, the Associate Director of Planning, select the lowest responsible bidder. He meets with department directors, executive directors, state officials, and doctors to explain the scope of the project and completion time. He makes recommendations regarding phasing, to permit work in an on-going patient care area, and construction means and methods, such as exits and life safety. When latent field conditions require changing the scope of the project, he negotiates the cost with the contractors and has saved HHC almost \$3 million. He signs off on the price and the punch list walk through.

HHC argues that Lotta is managerial because he worked on and/or wrote various policies and is akin to an expert advisor. According to the Union, Lotta is a professional construction expert.

We find that while Lotta is an expert in construction, he is not creating policy within the meaning of the Taylor Law. Therefore, his position is eligible.

The SMCs in the North Bronx Healthcare Network who submitted surveys but did not testify work in Ambulatory Social Work Services, Risk Management/Regulatory Affairs and Information Technology. Their duties include social work, developing and maintaining databases, training providers, providing network connectivity, and designing computer screens. Their positions are eligible for bargaining as they do not have a significant role in collective bargaining negotiations or administration, personnel administration, or policy formulation.

Health and Home Care Division

Maria LaHuffman, a SMC Level I, works in the Performance Improvement department. She is responsible for managed care, unsigned physician orders, and the OASIS program, which addresses the outcome assessment survey information system. She created an agenda with a list of managed care problems from which the performance improvement committee decided what to improve. The committee will create a policy on improving communication with managed care and she will draft the policy, to be approved by the Billing Director. She and the Billing Director wrote policies and procedures regarding managed care organizations, what happens when visits are not authorized and the denial of payment must be appealed, and how to educate nurses and staff about managed care's regulations.

HHC argues that LaHuffman is managerial because she worked on and/or wrote policies regarding documentation and communication. According to the Union, she puts together procedures for her staff to follow in implementing guidelines. We find that the position held by LaHuffman is eligible. The policies and procedures she has written regarding managed care are procedural.

The other SMC at Health and Home Care submitted a survey but did not testify. She works as the Entitlements Director in the Finance Division. She is responsible for all Medicaid activities and the supervision of the Insurance Verification Unit. She attends quarterly meetings regarding the implementation of new entitlements policies and procedures. As she does not have a significant role in the formulation of policy, collective bargaining or personnel administration, we find her position eligible.

Other Facilities

The remaining SMCs who submitted surveys but did not testify work in the Woodhull Medical Center, the Metropolitan Hospital Center, the Lincoln Medical and Mental Health Center, the Queens Health Network, and the MetroPlus Health Plan.⁵

At Woodhull, SMCs work in the Finance Cost Group, the Department of Pathology and Laboratory Medicine, the Pharmacy, and the Information Technology Department. A sample of their tasks includes overseeing the daily operations of the Statistics Department, maintaining databases, providing software training, and managing network servers.

At Metropolitan, SMCs work in the Regulatory Affairs/Quality Management department, the Finance/Grants department, Network Clinical Support Services, the Network Office of Training and Education, and Generation+/Northern Manhattan Network Information Services.⁶ They perform tasks such as preparing monthly network reports, assisting in the formulation of departmental budgets, revising the administrative policy and procedure manual upon receipt of the

⁵ The Queens Health Network is comprised of the Queens and Elmhurst hospitals.

⁶ The Generation+/Northern Manhattan Network includes the Harlem Hospital Center, the Metropolitan Hospital Center, and the Lincoln Medical and Mental Health Center.

Changes/Updates in Operating Procedures and Joint Commission standards, preparing grant budget submissions to federal, state, and city agencies, correcting malfunctions in the Radiology Information Systems, providing hardware and software support, collaborating in the management of the grant process for the Community Health Partnership Grant, performing database projects, maintaining systems, and installing hardware.

At Lincoln, SMCs work in Pharmacy Services and Generation+/Northern Manhattan Network Information Services. Their tasks include developing pharmacy software, supervising customer support staff, and preparing the operational budget for technical support, hardware, tools and equipment.

In the Queens Health Network, SMCs work in Case Management/Utilization Review, Health Information Management/Medical Records, and Information Systems. Their duties include conducting chart reviews, reviewing hospital admissions for medical necessity, certifying continued stays, recommending electronic report formats, setting up the procedure for updating the pharmacy database with new formulary drugs, providing help desk and on-line support, updating web content, creating network accounts, managing technical support staff and operations staff, developing applications, monitoring network activity, and maintaining a clinical data warehouse.

At MetroPlus, SMCs work in Behavioral Health Case Management and Quality Management. They perform tasks such as providing outpatient authorization and working with providers to ensure timely submission of medical records.

Based on the surveys, we find that these SMCs do not have significant involvement in collective bargaining negotiations or administration, personnel administration, or policy formulation. Accordingly, their positions are eligible for collective bargaining.

Therefore, with the exception of the positions which we find to be managerial and/or confidential, the title Senior Management Consultant is eligible for collective bargaining.

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 Senior Management Consultant (Business Organization and Methods) Levels I and II (Title Codes 983711 and 983712) are eligible for collective bargaining, except for the positions currently held by Maria Castro, Matthew Lee, Arthur Marshall Jr., Thomas Kennedy, Joseph Mathews, Sue Linda Saidel, Susan Wright, Julia Boynton, Jon Dongell, Carmen Clavell, Richard Elrose, Michelle Trummer, Jocelyn Cesareo, Jocelyn Izzard, Mary Suraci, and Anthony Sookram that are designated managerial and/or confidential and excluded from collective bargaining; and it is further,

ORDERED, that Certification No. 3-88 (as previously amended) be, and the same hereby is, further amended to include the title Senior Management Consultant (Business Organization and Methods) Levels I and II (Title Codes 983711 and 983712), subject to existing contracts, if any.

Dated: March 24, 2006
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

NOTICE OF AMENDED CERTIFICATION

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

DATE: March 24, 2006

DOCKET #: AC-11-03

DECISION NUMBER: 1-2006

EMPLOYER: The City of New York and the New York City Health and Hospitals Corporation, 125 Worth Street, New York, New York 10013

CERTIFIED/RECOGNIZED BARGAINING

REPRESENTATIVE:

Organization of Staff Analysts
220 East 23rd Street, Suite 707, New York, New York 10010

AMENDMENT: Certification No. 3-88 has been amended to add the following Title/Code:

Added: Senior Management Consultant (Business Organization and Methods) Levels I and II (Title Codes 983711 and 983712)

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: March 24, 2006

DOCKET #: AC-11-03

DECISION NUMBER: 1-2006

EMPLOYER: The City of New York and the New York City Health and Hospitals Corporation, 125 Worth Street, New York, New York 10013

CERTIFIED/RECOGNIZED BARGAINING

REPRESENTATIVE:

Organization of Staff Analysts
220 East 23rd Street, Suite 707, New York, New York 10010

DESIGNATION: Senior Management Consultant (Business Organization and Methods) Levels I and II (Title Codes 983711 and 983712) positions currently held by Maria Castro, Matthew Lee, Arthur Marshall Jr., Thomas Kennedy, Joseph Mathews, Sue Linda Saidel, Susan Wright, Julia Boynton, Jon Dongell, Carmen Clavell, Richard Elrose, Michelle Trummer, Jocelyn Cesareo, Jocelyn Izzard, Mary Suraci, and Anthony Sookram are designated managerial and/or confidential are therefore excluded from collective bargaining.