

**Local 621, SEIU, 78 OCB 2 (BOC 2006) [Decision No. 2-2006
(Rep) (Docket No. AC-16-04).]**

Summary of Decision: Union's petition sought to add the title Administrative Director of Fleet Maintenance to its bargaining unit. The Board found that employees in the title Administrative Director of Fleet Maintenance are eligible for collective bargaining, with the exception of one ADFM position at the Department of Citywide Administrative Services, which is excluded from collective bargaining. *(Official decision follows.)*

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

-between-

**LOCAL 621, SERVICE EMPLOYEES
INTERNATIONAL UNION,**

Petitioner,

-and-

THE CITY OF NEW YORK,

Respondent.

DECISION AND ORDER

On March 12, 2004, Local 621, Service Employees International Union ("Local 621" or "Union") filed a petition seeking to represent employees of the City of New York ("City") in the title Administrative Director of Fleet Maintenance (Title Code No. 10027) ("ADFM") and add them to its bargaining unit, Certification No. 55-70. The City asserts that the petitioned-for employees are managerial and/or confidential and are, therefore, not eligible for collective bargaining. We find that employees in the ADFM title are eligible for collective bargaining, with the exception of the position currently held by Stephen Weir at the Department of Citywide Administrative Services ("DCAS"),

which is excluded from collective bargaining.

BACKGROUND

ADFM is a competitive class civil service title. The job description defines the duties and responsibilities of ADFMs as follows:

This is a management class of positions. All personnel perform related work.

Under general direction, with latitude for the exercise of independent judgment, is responsible for managing the activities of a major segment or bureau performing maintenance and repair operations on a large fleet of motor vehicles and other equipment. In the temporary absence of the supervisor, may perform the duties of that position.

Under executive direction, with wide latitude for the exercise of independent judgment and initiative, advises on policy, coordinates and directs the procurement and/or operation, maintenance and repair of a large fleet of motor vehicles and other equipment. . . .

The direct line of promotion is from Supervisor of Mechanics (Mechanical Equipment) (“SMME”). ADFMs earn between \$77,000 and \$102,000 annually.

At the time of the hearing, seven ADFMs were employed in several City agencies: DCAS, the New York City Department of Transportation (“DOT”), the New York City Department of Correction (“DOC”), the New York City Police Department (“NYPD”), the New York City Department of Environmental Protection (“DEP”), and the New York City Housing Authority (“NYCHA”).

During fourteen days of hearing, the parties offered testimony from six ADFMs, four current and former SMMEs, a Deputy Director of Motor Equipment Maintenance (Sanitation) (“Deputy Director”), a DOC Warden in charge of the Transportation Division, the Director of Classification

and Compensation at DCAS, and the President of Local 621.

The parties stipulated that ADFM Mario La Prix, employed by NYCHA, does not perform managerial duties. The Union does not seek to represent ADFM Steven Weir, who is employed by DCAS, and whose duties, the Union believes, “differ drastically” from those of other ADFMs.

ADFM Testimony by Agency

Department of Citywide Administrative Services

Weir and his colleagues at DCAS coordinate all city-wide fleet activities. They approve all vehicle purchases, relinquishment requests, vehicle specifications, preventive maintenance programs, and vehicle leasing, including those submitted by the other ADFMs. Weir writes rules governing the vehicles utilized and maintained by City agencies, determines the form of record-keeping those agencies may use, and monitors the performance of those agencies.

Weir provides city-wide fleet administration to all mayoral fleets and works closely with his First Deputy Commissioner and Commissioner in the performance of such duties. Weir’s approval is required for all mayoral agency vehicle requisitions, including those from other ADFMs. As part of this process, Weir determines whether the applicable agency is within their authorized fleet size, ascertains what vehicles are being replaced at which agencies, and determines whether they meet the replacement criteria established by Weir’s office. Weir wrote the City’s vehicle classification policy and used this system to give “City Hall” several options as part of a city-wide vehicle reduction initiative. His proposals were accepted, and he implemented the policy.

Weir works with the Mayor’s Office of Operations and the Office of Management and Budget (“OMB”) to publish, formulate, and enforce all citywide regulations pertaining to vehicle acquisition and disposal. Weir is a member of the Citywide Administrative Review Board

("CARB"), which reviews all vehicle requisitions that are new needs, leases, rentals, sport-utility vehicles, and minivans. CARB meets on a monthly basis, and Weir prepares the agenda for the meetings. CARB established the city-wide vehicle replacement cycle based on Weir's proposals.

Weir, along with the Mayor's Office of Operations, promulgated a manual regarding accident reporting and loss control. The Mayor's Office of Operations and the First Deputy Commissioner review Weir's work. Weir has drafted policies and procedures that determine city-wide and agency fleet size, and has written DCAS's policies and procedures for vehicle maintenance and accident management.

Department of Transportation

Herb Graetz has been an ADFM at DOT since 1989. Graetz held the in-house title of Director of Fleet Maintenance from 1992 to 1997 and became Director of Fleet Administration in 1998. Along with fellow ADFM Jack Lawson, who holds Graetz' former position of Director of Fleet Maintenance, Graetz is responsible for procuring new vehicles and other equipment to maintain DOT's fleet of 2600 to 2700 vehicles. He reports directly to an Assistant Commissioner.

In his current title, Graetz has made recommendations to his superiors regarding the streamlining of expense vehicle purchases, which are those vehicles under \$35,000. At one point, the budget for purchasing expense vehicles for the different DOT programs was not centralized. Graetz testified that he and the Assistant Commissioner were able to convince the First Deputy Commissioner to change that system. After the Assistant Commissioner obtained approval from the First Deputy Commissioner to centralize the purchase of expense vehicles, Graetz helped implement the centralization. To implement the program, Graetz met with the heads of different DOT programs and negotiated with them to determine the ideal vehicle configuration. During that time, he stated

that he often made recommendations to the Assistant Commissioner regarding what vehicles to buy, how many vehicles to buy, what type of vehicles to buy, and what options to buy for which programs. Graetz formulates what to buy by using the DCAS-approved requirement contracts, reviewing each program in DOT, and speaking to the heads of the various DOT programs. Graetz stated that during certain intense periods, he can spend almost all of his time on preparing the expense budget.

Graetz is also involved with DOT's capital vehicle budget, which includes those purchases over \$35,000. For both budgets, Graetz makes a recommendation as to what vehicles should be purchased, and his recommendation must be approved by the Assistant Commissioner, then the Deputy Commissioner and the First Deputy Commissioner. The budgets are then subject to the additional approval of ADFM Weir at DCAS, and the capital budget must be further approved by OMB. The expense budget is approximately two to three million dollars, and the capital budget is approximately 30 million dollars.

In 1999, Graetz and Lawson were part of a group of approximately 30 DOT employees who gave input on the replacement of some of DOT's existing facilities. Graetz described to the group how DOT uses its fleet and made some cost-saving recommendations. He also prepared a list of the existing and proposed DOT facilities, which included his opinion on the productivity enhancements that would result from the proposed vehicle repair shops. Graetz also devised a program that used some of the agency's funding to outsource work, such as preventive maintenance on vehicles, to private vendors instead of DOT shops.

Graetz supervises two clerical workers, signs time cards, approves leave usage, completes performance evaluations, and is involved with interviewing prospective job candidates and hiring.

Graetz has attended one meeting that he characterized as a labor-management meeting, and he is not involved with the disciplinary process. Graetz does not attend collective bargaining sessions, nor does he have any involvement in the preparation for collective bargaining.

Lawson has been an ADFM at DOT since 1998. His in-house title is Director of Fleet Maintenance, which is the title that Graetz held from 1992 to 1997. Lawson is responsible for DOT's 13 maintenance and repair facilities and the maintenance and repair of between 2,600 and 2,700 vehicles. Lawson reports to an Assistant Commissioner.

Lawson was part of DOT's Y2K committee, and that as part of that committee, he recommended the installation of generators. Lawson testified that he wrote most of DOT's operating procedures and updated existing procedures, including a "Policies and Procedures" manual, the "Road Call" policy, and the "Fleet Services Operating Procedures" manual. However, Lawson admitted that most of those policies and procedures were in place before he arrived at DOT, and a significant part of the changes he made were mainly to update acronyms that changed since the policies or procedures had been published last. Lawson meets with a Deputy Commissioner on a monthly basis to discuss the operation of the fleet services division.

Lawson supervises eight employees directly and reviews the evaluations of the 149 employees he indirectly supervises. Lawson signs time cards, approves annual leave, and implements shift changes that result in employee transfers. He interviews candidates for employment and has recommended termination of employment.

Lawson has attended and testified at Step II and Step III hearings, and has attended and testified at an arbitration. Regarding labor-management meetings, Lawson testified that he is co-chair of a Quality of Life Committee and a Health and Safety Committee, which meets every month.

As part of that Committee, which is comprised of union personnel and an Assistant Commissioner, he recommended implementation of a vehicle inspection program based upon government regulations. His recommendation was accepted, and he helped implement the policy.

Department of Correction

Frederick Steinfeld has held the in-house title of Director of Fleet Maintenance at DOC since 2002. Steinfeld is responsible for the overall operation of DOC's vehicle maintenance and repair facility and the maintenance and repair of approximately 570 vehicles. As an ADFM, he has always reported directly to an Assistant Deputy Warden, who is represented for purposes of collective bargaining by the Assistant Deputy Warden's Association.

Steinfeld is responsible for targeting DOC vehicles for replacement and procuring expense and capital vehicles within DCAS' established parameters. DOC's expense budget for the procurement of vehicles, fuel, automotive parts, and lighting equipment is approximately two million dollars. He makes recommendations to the Assistant Deputy Warden and other supervisors about what to purchase or replace. Expense purchases must also be approved by DOC budget employees and others, then DCAS must approve the purchase. Capital purchases must also be approved by supervisors and DCAS after he makes his recommendation. Steinfeld represented the DOC Transportation Division at a meeting held to select vehicles for a new program, recommending the most efficient way to purchase the vehicles, and his recommendations were accepted. Steinfeld is also responsible for drafting the specifications required to replace capital vehicles – a recent example was the replacement of 33 inmate transport buses, each costing approximately \$100,000.

Steinfeld also meets with Weir at DCAS "on occasion" to discuss DOC's fleet size. He is in charge of a fleet study for DOC that he will present to DCAS and OMB in hopes that these

agencies will approve of a fleet-size increase. Steinfeld is also responsible for keeping vehicle repairs and downtime to a minimum.

Steinfeld supervises one employee directly, approves his leave usage, and completes his performance evaluation. Steinfeld supervises approximately thirty-five employees indirectly. He also supervises one shop. Steinfeld has no involvement in the collective bargaining process, has not attended labor-management meetings, and has not been involved in the disciplinary process as an ADFM or in the hiring of new employees.

New York City Police Department

Edward Cleary has been an ADFM for NYPD since 2001. Cleary oversees 13 maintenance and repair facilities and is responsible for the maintenance and repair of between 7,500 and 7,700 vehicles. Cleary's immediate supervisor is the Director of NYPD's Support Services Bureau, who reports to Chief McGrann, the Commanding Officer of NYPD's Support Services Bureau. Chief McGrann is represented by the Captain's Endowment Association for purposes of collective bargaining.

Cleary expanded the Fleet Services' salvage program by creating procedures for the proper stripping of police cars and established a formal inventory system that has helped the division become more efficient by salvaging parts. He reorganized the preventive maintenance program by creating new maintenance procedures and a requirement that vehicles must report to repair shops on a more frequent basis. Every work order now lists the next scheduled preventive maintenance appointment. He also reviews NYPD's maintenance repair contracts to determine if they are sufficient for his operation and makes recommendations for purchases.

Cleary decided to utilize warranty reimbursement money to fund overtime work and created

an overtime plan for the Republican National Convention. He also established a vehicle loaner program of approximately 200 cars for NYPD employees to use while their regular car is out of service and, from time to time, meets with vehicle manufacturers to address recurring vehicle problems and recommend design changes.

Cleary supervises four employees directly, for which he signs time cards, approves leave usage, and completes annual performance evaluations, and indirectly supervises 270 employees. He signs off on the evaluations prepared by his direct subordinates for his indirect subordinates, reviews all overtime slips, and monitors employee productivity through daily service reports, which are discussed at a weekly staff meeting.

Cleary attends interviews of candidates for mechanical titles and is accompanied by an NYPD Administrative Manager and sometimes by a Supervising Supervisor. He is not involved with collective bargaining. Since he has been an ADFM, a grievance has not been filed. Cleary testified that he speaks with shop stewards regularly about disciplinary actions, overtime problems, and other workplace issues. He writes NYPD Command Disciplines for subordinates.

Department of Environmental Protection

George McCorkell had been an ADFM at DEP since 2000. He retired after he testified. McCorkell oversaw DEP's five upstate maintenance and repair shops and was responsible for the maintenance and repair of approximately 540 vehicles. McCorkell reported to DEP's Director of Fleet Administration, and his communications with individuals above the Director were sporadic.

McCorkell testified that he had a budget of \$135,000 for "emergency and local" purchases and stated that almost all of his purchases were under \$5,000. McCorkell was responsible for approving specifications for new vehicles, selecting vendors and procuring expense and capital

vehicles with the approval of DCAS. McCorkell created procedures to facilitate inspections, was responsible for allocating vehicles more efficiently, and ordered training for his employees. He also helped co-author DEP's vehicle policy operator's guide.

He directly supervised fifteen employees, for whom he prepared evaluations, and met with the supervisors of indirect employees, approving leave requests and authorizing time sheets. McCorkell testified that he gave his input on hiring decisions. McCorkell had no involvement in the collective bargaining process and had not attended any grievances or arbitrations. McCorkell attended meetings of one of the three DEP labor-management committees.

Other Testimony

The Union presented testimony regarding the Deputy Director and SMME titles, both of which are represented by Local 621. In *Service Employees International Union, Local 621*, Decision 7-92, the Board held that those in the title of Deputy Director, who work at the Department of Sanitation ("DSNY") in the Bureau of Motor Equipment ("BME"), are non-managerial employees.

The job description defines the duties and responsibilities of Deputy Directors as follows:

This is a management class of positions. All personnel perform related work.

Under general direction, with great latitude for the exercise of independent judgement, is responsible for managing the activities of a segment of the Department of Sanitation's motor vehicle repair and maintenance operation, involving a Central Repair Shop and a large number of Field Borough Shops and garages; performs related work. . . .

. . . May be assigned administrative responsibility for support operations for motor vehicle maintenance and repair. May be assigned to coordinate complex operational programs with other major organizational units within the Department.

Deputy Directors are responsible for budget requests, justifying those requests, allocating the budget within the area of responsibility, making budget recommendations to the Director, and

administering, monitoring, and controlling Other Than Personnel Services expenditures. A Deputy Director is responsible for developing and recommending capital improvement projects to the Director of Motor Equipment Maintenance (Sanitation) (“Director”) to upgrade or expand present facilities, or provide new ones, and monitoring purchases and funding for the acquisition of capital equipment. A Deputy Director is also responsible for developing and maintaining the Management by Objectives Program for subordinate supervisors and monitoring progress towards on-going targets. Deputy Directors have personnel and budget responsibilities for their supervised area including overtime budget, personnel recruitment, interviewing, hiring, vacancy control, and personnel allocation. They are responsible for directing the operations of special projects, including but not limited to new equipment, warranties, research and development, and engineering. They may serve as the Director in the Director’s absence.

Deputy Directors can supervise between 63 and 948 employees, directly and indirectly. Deputy Directors can be responsible for 520 to 5,600 vehicles and supervise as many as 31 shops. They earn between \$107,542 and \$115,715 annually, exclusive of overtime.

In *Service Employees International Union, Local 621*, Decision No. 24-89, the SMME title was added, without opposition, to Local 621’s bargaining unit. The job description for SMMEs reads, in part:

Under general supervision or direction, supervises, directs and is responsible for the work of assigned personnel in connection with the repair, overhaul and maintenance of various types of mechanical equipment, motor vehicles and automotive equipment; supervises assigned personnel; performs related work.

SMMEs may supervise between 50 and 277 subordinates directly and indirectly and can be responsible for between 800 and 1,800 vehicles in as many as 18 satellite garages. SMMEs earn

between \$85,266 and \$92, 947, exclusive of overtime. They also have city-wide responsibilities.

Both Deputy Directors and SMMEs appear as witnesses at all steps in the grievance procedure, including arbitration. They are responsible for drafting procedures. They are also involved in the disciplinary process: they testify at disciplinary hearings, sit in on informal disciplinary conferences, and recommend discipline. Both titles hold, chair, or attend labor-management meetings. Deputy Directors and SMMEs can order discretionary overtime so long as they stay within their budgetary limits. Employees in both titles sign time cards, approve annual leave for their subordinates, and are involved in interviewing candidates from the Civil Service List.

POSITIONS OF THE PARTIES

City's Position

The City argues that the ADFM title must be found to be managerial and/or confidential for purposes of collective bargaining. The NYCCBL clearly provides that those employees who are managerial and/or confidential do not share the same right to be represented by a union as other public employees, and the Board has previously recognized the sound policy reasons for excluding managerial and/or confidential employees from collective bargaining. Collective bargaining by managerial employees would create a multitude of conflicts of interest. It would severely interfere with the right of the employer to formulate, determine, and effectuate its labor policies with the assistance of employees who are not represented by a union with which the employer deals. In addition, to include managers in collective bargaining would cause a significant disruption of managerial procedures, interfere with the efficient operation of the City in personnel matters, and stand as a significant impediment to collective bargaining with the City.

The City argues that, when the Board considers whether an employee is managerial, significant reliance should be placed on the employee's formulation, determination, and effectuation of the employer's policies. This requires that the employee engage in developing the specific objectives of a governmental agency to fulfill its mission, and the methods, means, and extent of achieving such objectives. When the Board considers whether an employee is confidential, the Board should examine whether the employee attends meetings where potential impact of new policies on collective bargaining are assessed and are necessarily involved in discussion of budget policy and direction.

The City contends that the record in the instant proceeding, including the ADFM job specification, organizational charts, and testimony from witnesses, establishes that the duties and responsibilities of the ADFM title are managerial and confidential. ADFMs regularly participate and engage in the essential process of policy formulation. Each of the employees is responsible for either the maintenance and repair of hundreds or thousands of vehicles, or their respective agency's vehicle procurement and replacement. ADFMs set policies relating to their divisions, make recommendations regarding vehicle procurement and/or maintenance and repair, and meet regularly with Assistant Commissioners or Deputy Commissioners to review their operations. Indeed, ADFMs are expert advisors in matters pertaining to vehicle procurement, replacement, maintenance, and repair. Moreover, their responsibilities are similar to employees in the Director title, who are responsible for the purchase, repair, and maintenance of DSNY's fleet, just as ADFMs are responsible for their respective fleets. In *Service Employees International Union, Local 621*, Decision No. 7-92, the Board determined that the three Directors of DSNY's BME were managerial and, therefore, not eligible for collective bargaining.

Furthermore, ADFMs are high-level managers who are heavily involved in personnel administration, including hiring, firing, promoting, evaluating, and assigning employees, as well as budget recommendation. ADFMs are also heavily involved with labor relations, as they meet with union representatives and represent management in grievance procedures.

Additionally, ADFMs are not now, nor have they ever been, included in a collective bargaining agreement for the purposes of negotiation with the City. They are not covered by a collective bargaining agreement and have not been represented at any time by any certified employee organization. The ADFM title is also covered by the City's management pay plan.

Thus, the record fully supports a finding that the ADFM title is managerial and/or confidential, and even if the Board should find that not all of the employees sought engage in managerial activities, all of them are subject to assignment thereto. Accordingly, it would be inappropriate to split the title between eligible and ineligible employees.

Union's Position

The Union argues that, based on the record, the City has not met its burden of proving that the ADFM title is either managerial or confidential. On the contrary, the evidence conclusively demonstrates that ADFMs are supervisors with responsibilities similar to those of members of Local 621 and that they, like other such supervisors, are neither managerial nor confidential. ADFMs do not formulate policy, do not assist in the preparation for collective bargaining, do not exercise independent judgment in the administration of agreements or in personnel administration, and do not occupy a position in the table of organization high enough to be managers.

The Union contends that the findings by the Board in *Service Employees International Union, Local 621*, Decision No. 7-92, are dispositive of the issue presented here. The Deputy Director job

description is very similar to that of the ADFM title, and Deputy Directors perform work similar to that of ADFMs. The evidence shows that most Deputy Directors exercise more discretion in making decisions, supervise larger operations, have more subordinates, have more vehicles under their jurisdiction, and have a larger role in personnel administration than ADFMs. Since these Deputy Directors serve in a title the Board has found to be eligible for inclusion in collective bargaining, it follows that the ADFMs, with their lesser duties, are not managers. Additionally, Local 621 members in the SMME title perform work that is very close to the work performed by ADFMs, and SMMEs have assumed the responsibilities of ADFMs after an ADFM departs.

The Union contends that ADFM duties do not involve policy making and amount to nothing more than assisting City agencies in maintaining effective fleets of operating vehicles with minimal downtime. Employees who are responsible for trying to improve efficiency to meet targets and improve service may be exercising “professional judgment,” but are not engaged in policy formulation and are not managers. Similarly, having supervisory responsibilities, even if those responsibilities are significant, does not make an employee managerial. Since this is, at most, what ADFMs do, they are not managers.

Like SMMEs and Deputy Directors, ADFMs bring their considerable skill and technical knowledge to bear on the critical job of monitoring the repair and maintenance of City vehicles, but others make policy decisions. Almost every decision in an ADFM’s ambit is controlled by DCAS and the ADFMs’ other superiors, and DCAS is responsible for the promulgation of policies and performance monitoring. No policy is made or independent judgment exercised by any of the ADFMs in question.

The Union also argues that ADFMs have reported, directly or indirectly, to non-managers,

earn less than most members of the Union, have minimal involvement in labor relations and the contractual grievance process, and have involvement at labor-management meetings that is nothing beyond what would be expected of a non-managerial supervisor. Although many ADFMs attend interviews of candidates for hire or promotion and claim they make recommendations as to who will be hired, there is nothing in the record to show that any of the ADFMs do anything more than follow Civil Service list order, similar to Deputy Directors and SMMEs.

DISCUSSION

NYCCBL § 12-305 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, the 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. *Communications Workers of America, Local 1180*, Decision No. 4-2005; *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.*

In *Service Employees International Union, Local 621*, Decision No. 7-92, we held that the Deputy Directors’ responsibilities do not rise to a level that warrants managerial status. Deputy Directors are responsible for managing the activities of a segment of a motor vehicle repair and maintenance operation, including budget requests and allocation, developing and recommending projects, and conducting a wide range of supervisory activities. The Board stated that Deputy Directors function as liaisons between the field and the BME hierarchy; their primary task was to gather information from the shops and garages under their command and pass it along to their superior, the Director. *Id.* at 42. Although Deputy Directors occasionally attend meetings with a DSNY Deputy Commissioner and other high level staff, their purpose is to supply technical data kept in the normal course of business, and others make the decisions as to what to do with that information. *Id.* Therefore, we found that they do not participate regularly in policy formulation.

In contrast, the Board found that the Directors were managerial. Although some of their duties are similar to Deputy Directors, Directors have responsibilities that are greater than those of the Deputy Directors. Directors are responsible for testing and evaluating new policies and procedures and recommending changes when necessary. They regularly participate in intra-departmental and inter-agency meetings with high-level staff at which their advice is solicited and their recommendations given great weight. With certain programs, the Directors are responsible for deciding which City agencies will be given the opportunity to participate.

The Board stated that unlike the Deputy Directors, Directors set priorities for the entire operational area and determine what actions must be taken to meet the goals and standards set by DSNY. *Id.* at 38. In so doing, they establish rules and regulations and, as the highest level of field employee in the BME, they are given substantial discretion and authority in carrying out their duties and responsibilities. *Id.* at 38-39. They are frequently consulted, regularly invited to meetings with high-level DSNY personnel, including the Commissioner, and often asked to make recommendations on matters affecting their unit, as well as DSNY and the City as a whole. Thus, the Board found that Directors regularly participate in the “essential process” which results in a policy proposal and the decision to put such a proposal into effect. *Id.* at 40.

In the instant matter, we find that employees in the ADFM title, with the exception of the position currently held by Weir, whom the Union does not seek to represent, are not managerial because they are not significantly involved in policy making. Weir, like the Directors at DSNY, is given substantial discretion and authority in carrying out his duties and responsibilities. Weir approves vehicle purchases, relinquishment requests, vehicle specifications, preventive maintenance programs, and vehicle leasing for City agencies, including those submitted by other ADFMs. He monitors the performance of the agencies he oversees, establishes rules and regulations, like the vehicle classification policy, is frequently consulted, and often invited to meetings with high-level personnel. As a member of CARB, Weir has participated in establishing the city-wide vehicle replacement cycle. His policies and procedures determine city-wide and agency fleet size. As a result of his significant role in the formulation of policy, we find that the position currently held by Weir is managerial.

In contrast, the testimony of the other ADFM witnesses warrants a conclusion that these employees do not have regular and significant involvement in the process by which policy decisions are made. Their duties more closely mirror those of Deputy Directors at DSNY rather than Directors. Although it appears that, on occasion, ADFMs make suggestions on policy matters, the record indicates that, typically, such recommendations are filtered up through their superiors and that the ADFM's normal function is to follow and implement policy and procedures as set rather than establish new policy.

ADFM's gave many examples of how they have revised, improved, and/or created procedures. In addition, ADFMs provided many examples of how they have improved efficiency to meet targets. For instance, Graetz testified that he helped devise a program for centralizing the process of purchasing expense vehicles at DOT to make the purchasing process more efficient. Although these tasks involve a high level of professional judgment, they do not rise to the level of policy formulation. Throughout the testimony, we see that others, above the level of these employees, have the authority or responsibility to select among options and to put a proposed policy into effect. The contested ADFMs are counted on to implement those policies.

While ADFMs have substantial latitude to use their independent judgment in implementing policy and running their respective areas, their discretion must be exercised within the boundaries of specified DCAS guidelines and guidelines outlined by their superiors, some of whom are represented by a union for purposes of collective bargaining. When we determine managerial status, it is the conditions under which discretion may be exercised, and not the exercise of discretion itself, that is relevant. *Uniformed Fire Officers Ass'n, Local 854*, Decision No.15-92 at 22-23.

Furthermore, ADFMs' limited involvement in contractual grievances and labor-management meetings is not indicative of managerial status. We also note that while ADFMs, like Deputy Directors at DSNY, have routine supervisory responsibilities, such as overseeing the budget, supervising and assigning employees, recommending discipline, completing or reviewing employee evaluations, approving time and leave requests, including overtime, monitoring performance, and interviewing potential job candidates, these duties do not constitute a managerial level of responsibility. *Communications Workers of America, Local 1180*, Decision No. 4-2005; *Serv. Employees Int'l Union, Local 621*, Decision No. 7-92.

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.

Despite the City's conclusory assertions, there is no evidence in the record that would indicate that ADFMs act in a confidential capacity to a managerial employee involved in collective bargaining negotiations, the administration of collective bargaining agreements, or personnel administration. Accordingly, we cannot find that they are confidential.

For the reasons stated above, we find that the employees in the ADFM title are neither managerial nor confidential employees and are eligible for collective bargaining, with the exception of the position currently held by Stephen Weir, which is designated managerial and is excluded from 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 Administrative Director of Fleet Maintenance are eligible for collective bargaining, with the exception of the position currently held by Stephen Weir at the Department of Citywide Administrative Services, which is designated managerial and excluded from collective bargaining; and it is further,

ORDERED, that Certification No. 55-70 (as previously amended) be, and the same hereby is, further amended to include the title Administrative Director of Fleet Maintenance (Title Code No. 10027), 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-16-04

DECISION NUMBER: 2-2006

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

CERTIFIED/RECOGNIZED BARGAINING

REPRESENTATIVE: Local 621, Service Employees International Union, AFL-CIO
75 Darcy Circle, Islip, New York 11751

AMENDMENT: Certification No. 55-70 has been amended to add the following
Title/Code:

Added: **Administrative Director of Fleet Maintenance**
(Title Code No. 10027)

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-16-04

DECISION NUMBER: 2-2006

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

CERTIFIED/RECOGNIZED BARGAINING

REPRESENTATIVE: Local 621, Service Employees International Union, AFL-CIO
75 Darcy Circle, Islip, New York 11751

DESIGNATION: The Administrative Director of Fleet Maintenance position currently held by Stephen Weir at the Department of Citywide Administrative Services is designated managerial and is therefore excluded from collective bargaining.