

Organization of Staff Analysts, 78 OCB 5 (BOC 2006) [Decision No. 5-2006
(Rep) (Docket No. RU-1248-03).]
Affirmed. Matter of HHC v. Bd. of Certification of the City of New York, 237 N.Y.L.J. 99
(Sup. Ct. N.Y. Co. April 23, 2007).

Summary of Decision: OSA sought to represent Enrollment Sales Representative Assistants and Enrollment Sales Representatives in a separate unit or by accretion. DC 37 and CWA also sought to accrete the titles. HHC argued that the titles were confidential because of their access to marketing information. The Board found the titles eligible and ordered an election on unit placement. ***(Official decision follows.)***

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

- between -

ORGANIZATION OF STAFF ANALYSTS,

Petitioner,

- and -

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

Intervenor,

- and -

**LOCAL 1180, COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO**

Intervenor,

- and -

**NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION,**

Respondent.

DECISION AND DIRECTION OF ELECTION

On October 16, 2003, the Organization of Staff Analysts (“OSA”) filed a petition for certification, docketed as RU-1248-03, seeking to represent employees in the titles Enrollment Sales Representative Levels I, II, and III (Title Codes 98504C, 98504D, and 98504E) (“ESR”) employed at MetroPlus Health Plan, Inc. (“MetroPlus”), a subsidiary of the New York City Health and Hospitals Corporation (“HHC” or “Corporation”). OSA sought to represent the title in a separate bargaining unit or, in the alternative, to add the title to its bargaining unit, Certification No. 3-88, which includes titles such as Senior Health Care Program Planner Analyst (“Senior HCPPA”), Systems Analyst titles, Planning-Scheduling Analyst titles, and Staff Analyst titles. On October 24, 2003, the petition was amended to include the title Enrollment Sales Representative Assistant (Title Code 98504B) (“ESR Assistant”) OSA submitted a showing of interest that at least 30% of the ESR employees wish to be represented by OSA for purposes of collective bargaining.¹ On January 29, 2004, District Council 37, AFSCME, AFL-CIO (“DC 37”) filed a motion to intervene, seeking to add the ESR titles to its bargaining unit, Certification No. 46C-75, which includes titles such as Clerical Associate, Eligibility Specialist, and Call Center Representative. On April 26, 2004, Local 1180, Communications Workers of America, AFL-CIO (“CWA”) filed a motion to intervene, seeking to add the ESR titles to its bargaining unit, Certification No. 41-73, which includes titles such as Principal Administrative Associate (“PAA”), Health Care Program Planner Analyst (“HCPPA”), and Coordinating Manager titles.² In its post-hearing brief, CWA modified its position

¹ Unless otherwise indicated, ESR refers to ESR Levels I, II, and III as well as ESR Assistant.

² OSA, DC 37, CWA (collectively “Unions”), and Civil Service Technical Guild, Local 375, District Council 37, previously sought to represent ESRs, as well as various HCPPA titles, in Docket No. RU-1138-93. HHC had objected that the titles were managerial and/or confidential. In settling that case, HHC withdrew its objection and the unions withdrew the request to represent ESRs. *See*

to seek the accretion of only ESRs Level II and III. HHC argues that the ESR employees are confidential and should be excluded from collective bargaining because of their access to proprietary marketing information that should not be revealed to MetroPlus's competitors, whose Board of Directors include officials of unions that are members of the Municipal Labor Committee. Further, HHC argues that representation of ESRs is inappropriate because members of the Municipal Labor Committee participate in the selection of health care plans to be offered to employees of the City of New York ("City") and HHC. This Board finds that the employees in the ESR titles are eligible for collective bargaining and that accretion to any of the three bargaining units would be appropriate. Accordingly, we direct an election in order to ascertain the wishes of the employees in the ESR titles as to their unit placement.

BACKGROUND

A hearing was conducted over 11 days at which testimony was heard from ESRs, supervisors of ESRs, and employees in titles represented by OSA and DC 37. At the time of the hearing, there were 296 employees in the ESR titles.³ They work in six divisions of MetroPlus: Marketing, Customer Service and Community Relations, Medical Management, Corporate Affairs, and MIS.

Org. of Staff Analysts, Decision No. 26-95.

³ With its post-hearing brief, OSA submitted a list obtained from HHC indicating that there were 339 ESRs as of December 9, 2005. The list also indicates that there were changes in the deployment of ESRs; for example, some ESRs work in the Finance Division and no ESRs are in the functional title of Eligibility Clerk. DC 37 objected to the admission of the list as the record was closed. CWA objected that the document was not properly authenticated and conflicted with documents in the record. Since the document is a more recent version of one of the documents admitted into evidence, we note the increase of employees in the ESRs titles. However, as the other changes were not addressed by the parties, including OSA, and are not determinative of the issues before us, we will not address them.

Within those divisions, they work in a variety of functional titles, such as Marketing Representative, Customer Services Representative, Quality Assurance Representative, and Provider Relations Representative.

MetroPlus

MetroPlus is health maintenance organization (“HMO”) that offers MetroPlus Gold, a product for HHC employees, and several New York State-sponsored health insurance programs, Medicaid Managed Care, Child Health Plus, Family Health Plus, and Partnership in Care, which is an HIV Special Needs Plan. It is a wholly owned subsidiary of HHC with its own Board of Directors. MetroPlus’s highest officer is the Executive Director, who reports to the Board of Directors and HHC’s President. Its bylaws indicate that one of its purposes is to “operate in a manner consistent with the goals and objectives of [HHC] and its mission to service the people of New York City.” (OSA Ex. 11 at 3.) MetroPlus has its own operating procedures and its own Employee Handbook, which references HHC policy statements, operating procedures, personnel rules and regulations, and forms. The Performance Expectations section of the Employee Handbook provides, in part, that “[e]mployees shall not reveal or divulge information about the Corporation obtained by reason of employment.” (OSA Ex. 5 at 18.)

HHC asserted the following facts, which we will assume to be true for the purpose of considering HHC’s argument that ESRs are ineligible for collective bargaining: The health plans offered to City employees are selected by a labor/management committee on health. Representatives from OSA, DC 37, the uniformed unions, the United Federation of Teachers, the International Brotherhood of Teamsters, Local 237, and the City are members of the labor/management committee. The committee issues two requests for proposals, one for HMOs and another for hospital

and medical coverage. For both requests for proposals, the committee evaluates the responses, selects plans, and negotiates rates. MetroPlus and its competitors, other managed care providers such as GHI and HIP, all participate in the request for proposals process. They compete to provide coverage not only for HHC employees but also for individuals eligible for Medicaid, Child Health Plus, and Family Health Plus. HIP's Board of Directors includes an Associate Director of DC 37 and the President of the International Brotherhood of Teamsters, Local 237. GHI's Board of Directors includes the Director of the United Federation of Teachers' Welfare Fund and the Secretary/Treasurer of the International Brotherhood of Teamsters, Local 237. To remain competitive, MetroPlus relies on its ESRs, who are informed of marketing strategies and methods that are derived from research regarding the appropriate demographics.

The Associate Executive Director of Marketing testified that MetroPlus is one of the fastest growing health plans in the industry. It has grown over 300% since August 2000. MetroPlus's customers are Medicaid recipients and uninsured individuals in the New York City area, people who are HIV positive, and HHC employees. In order to target consumers who are not HHC employees, MetroPlus conducts research using census data available on the internet and health enrollment reports from the New York City Department of Health and Mental Hygiene ("DOHMH") and the New York State Department of Health. Consultants help analyze the market and the targeted consumers. Twice a year, MetroPlus uses the census data to develop spread sheets that give demographic information on the consumers' ages, income levels, and zip codes. To make determinations on outreach and enrollment strategies, MetroPlus reviews the city's and state's monthly reports regarding enrollment trends and enrollment penetration by various managed care organizations, broken down by product line and by county. MetroPlus reviews trade magazines and

websites to identify industries that do not offer health insurance and work closely with HHC facilities to identify their uninsured and Medicaid populations. MetroPlus also relies on data from internal staff to locate certain trends. For example, ESRs who are in the Marketing Division and work in the field learn where MetroPlus's competitors are marketing and identify high traffic areas on which MetroPlus should concentrate. When these ESRs report that an area did not meet expectations, MetroPlus will reassess what locations to go to and at what times.

The Associate Executive Director of Marketing, an Associate Director who reports to him, and a consultant participate in monthly strategy sessions to review what areas and demographics they want to target. In addition, the Associate Executive Director of Marketing holds weekly director/manager/supervisor meetings to review potential strategies with those who report directly to him. They, in turn have monthly team meetings and bi-weekly question and answer sessions, at which they discuss objectives and target areas, as well as times of year to approach them, with their staff. Information is also shared through voice mails, e-mails, and memoranda. ESRs in the Marketing Division have information regarding enrollment research and enrollment strategies. They are provided with marketing information that is very specific to the strategy, such as the target geographic area and the demographics within that area. These ESRs know what ethnic group or age group MetroPlus is seeking and in what regions they are most likely to find them. Similarly, if MetroPlus were targeting more uninsured consumers or more Medicaid recipients, these ESRs would be informed of the locations of a high volume of these populations. ESRs are also given reports about MetroPlus's competitors and specific goals to outsell the competitors.

Since 2000, MetroPlus has had the exclusive right to market its government-sponsored programs at most locations within HHC's 11 acute facilities, six diagnostic and treatment centers,

and approximately 60 child health/family health centers. At the few HHC hospitals that have an equity ownership in or a financial agreement with a particular plan, MetroPlus shares the location with one or two other plans. HHC has contracts with approximately eight other managed care companies, such as HIP, Fidelis, Health First, and Community Premier Plus, that previously marketed within HHC and that continue to approach the Corporation and individual acute care facilities in order to convince them to permit on-site marketing. These competitors market immediately outside the facilities from mobile vehicles.

As “facilitated enrollers” licensed by the state to facilitate the enrollment process, ESRs in the Marketing Division are required to explain to consumers that they have a choice among health plans and to provide every consumer with a list that indicates the 800 number of the various managed care organizations, the products they offer, and the counties and boroughs in which they operate. (Tr. 95.)⁴ The list includes managed care organizations such as Health First, Health Plus, Center Care, Well Care, Community Premier Plus, HIP, and GHI, which has recently entered the Medicaid, Child Plus, and Family Health Plus market under a different name. While HIP is not directly competing with MetroPlus at HHC facilities as much as it did previously, HIP has a strong marketing presence and is still growing.

Marketing to HHC employees can occur once a year, during the designated transfer period. MetroPlus has “limited to no opportunity” to market to HHC employees and is “very limited” in what they are allowed to do in this regard. (Tr. 423, 431.) It has materials that can be provided to HHC employees only upon request. The Associate Executive Director neither is involved nor knows who is involved with negotiations with the health benefit committee of the Municipal Labor

⁴ Numbers in parentheses refer to the hearing transcript, hereinafter abbreviated as “Tr.”

Committee regarding which plans have the ability to solicit City and HHC employees.

ESRs in the Marketing Division are required to sign a copy of the MetroPlus Marketing Department Code of Ethics that provides, in part, “I will respect the confidentiality of information that may come my way in the course of representing the Plan.” (Appendix to OSA’s Post-Hearing Brief.)

Enrollment Sales Representatives

HHC’s position description for the ESR Assistant title states that an ESR Assistant “[u]nder direct supervision of [ESR], receives on-the-job training to develop skills and techniques necessary to identify qualified participants and educate them as to the benefits of selecting MetroPlus as a managed care provider.”⁵ (Joint Union Ex. 9B.) According to HHC’s position description for the ESR title, an ESR “[u]nder supervision, identifies qualified participants and educates them as to the benefits of selecting MetroPlus as a managed care provider, achieves predetermined monthly enrollments based on regularly updated goals and objectives; may provide training and/or

⁵ The position description gives the following as examples of typical tasks of an ESR Assistant:

1. Receives training in the form of on-the-job instruction and practice which may be supplemented by demonstrations and classroom lectures.
2. Assists in presenting clear and accurate information regarding health plan to eligible recipients and community-at-large.
3. Assists in educating and enrolling qualified participants in a variety of arenas including but not limited to income support centers, provider sites, churches, WIC programs, shelters.
4. Assists in presenting MetroPlus Health Plan information to HHC employees at annually designated open enrollment periods.
5. Assists in performing telemarketing activities as appropriate for purposes of enrollment and follow-up activity.
6. Participates in regularly scheduled sales/marketing meetings as required.
7. Performs routine paperwork and office tasks.
8. Performs other related tasks as required.

supervision to subordinate staff; and maintains positive public relations presence within the community.”⁶ (Joint Union Ex. 9A.) Many of the functional titles in which ESRs serve also have

⁶ According to the position description, the following are examples of typical tasks for an ESR Level I:

1. Implements methods, activities and action plans necessary to achieve daily, weekly and monthly objectives.
2. Presents clear and accurate information regarding health plan to eligible recipients and community at large;
3. Performs group and individual presentations for purposes of educating and enrolling qualified participants in a variety of arenas including but not limited to income support centers, provider sites, churches, WIC programs, shelters.
4. Presents MetroPlus Health Plan information to HHC employees at annually designated enrollment periods.
5. Performs telemarketing activities as appropriate for purposes of enrollment and follow-up activity.
6. Maintains accurate documentation related to enrollment and field activities.
7. Participates in regularly scheduled sales/marketing meetings as required.
8. Performs other related tasks as directed.

An ESR Level II performs the following typical tasks:

1. May act as a perceptor [sic] to subordinate [ESR Assistants or ESRs] to facilitate their understanding of MetroPlus objectives, operations and site specific information.
2. Implements and monitors appropriate methods, activities and action plans necessary to regularly achieve accelerated predetermined enrollment objectives.
3. Ensures appropriate and accurate documentation of plan enrollments and field activities.
4. Provides assistance and facilitates communications to sales management team.
5. Participates in biweekly and monthly sales/marketing meetings.
6. Performs related duties.
7. Performs all duties of [ESR] Level I.

An ESR Level III’s typical tasks include:

1. Supervises [ESRs] Levels I and II on a regular basis to ensure that predetermined goals and objectives are met and information is presented to potential recipients in a clear and concise manner.
2. Prepares and coordinates scheduling of subordinate [ESRs] for group and individual presentations for the purpose of educating and enrolling qualified participants in a variety of arenas including but not limited to income support centers, provider sites, churches, WIC programs and shelters.
3. Participates in planning, implementing and conducting training programs for [ESRs].

a functional job description prepared by MetroPlus.

In order to be qualified, an ESR Assistant is required to have either (a) a high school diploma (or its equivalency) and demonstrated skills in written and oral communications or (b) a satisfactory equivalent combination of education, training, and experience. An ESR is required to have either (a) three months of training and orientation administered by MetroPlus personnel, (b) a high school diploma (or its equivalency), demonstrated skills in written and oral communications, and one year of experience in direct consumer contact, sales and/or social services, or (c) a satisfactory equivalent combination of education, training, and experience. An ESR Level II is required to have either (a) one year of experience as an ESR Level I or (b) an additional year of related full-time experience. An ESR Level III is required to have either (a) one year of experience as an ESR Level II or (b) an additional two years of related full-time experience, with at least one of those years in a supervisory capacity. Many ESRs have some years of college education; some ESRs have college and graduate degrees.

The salary range for an ESR Assistant is \$27,986 to \$53,136; for an ESR Level I, \$30,384 to \$57,026; for an ESR Level II, \$32,122 to \$61,551; and for an ESR Level III, \$33,498 to \$64,155.

In the Marketing Division, ESRs work in (1) the Marketing Field Operations Unit (58 ESR

-
4. Maintains up-to-date information on health plan policies, procedures and state contract regulations, and monitors all levels of [ESR] activities to ensure compliance.
 5. Prepares written reports substantiating activities of enrollment sales staff on a regular basis.
 6. Participates with the Director in the annual budget process.
 7. Assists in the preparation of and participates in regularly scheduled sales/marketing meetings.
 8. Monitors day-to-day activities of sales enrollment operations and reports any problems to the appropriate personnel.
 9. Performs related duties.

Assistants in the functional titles of Marketing Representative and Driver; 74 ESRs Level I in the functional title of Marketing Representative; 13 ESRs Level II in the functional titles of Marketing Representative and Marketing Supervisor; and 16 ESRs Level III in the functional titles of Marketing Representative, Marketing Supervisor, and Community Supervisor), (2) the Events Planning Unit (one ESR Level III in the functional title of Event Specialist), and (3) the Recertification Unit (nine ESR Assistants in the functional titles of Recertification Representative, Driver, and Administrative Assistant; 21 ESRs Level I in the functional titles of Recertification Representative and Driver; and two ESRs Level II in the functional title of Recertification Representative).

The 149 Marketing Representatives in the Marketing Field Operations Unit are “responsible for educating and enrolling prospective and potential consumers who are eligible for one of the New York State government-sponsored health insurance programs.” (T. 26.) Marketing Representatives are required to have a high school diploma or GED, but a college degree or course work is preferred. They are also required to have one to two years of sales or customer service experience, preferably in managed care. Newly hired Marketing Representatives go through a five-week training program, during which they are taught product knowledge, selling skills and techniques, and marketing guidelines and regulations. Upon completion of training, Marketing Representatives are facilitated enrollers. In addition to the initial training program, Marketing Representatives receive on-going training from MetroPlus and training from other entities, such as DOHMH. Marketing Representatives are deployed to locations throughout the City where there are large populations of potential consumers, such as hospitals, senior citizen centers, churches, income support centers, social services agencies, athletic events, and health fairs, to speak with potential consumers regarding their health needs, determine which health insurance programs they are eligible for, discuss the benefits of the programs, and, if a consumer is interested in joining, complete either an Access New

York application or a New York Medicaid Choice application. Completing an application can involve extensive follow-up to gather additional information.

Marketing Representatives have gross goals concerning the number of applications and the number of applicants submitted: eight Access New York applications, five New York Medicaid Choice applications, and 35 applicants per week, approximately 30% of which should be in each product line. As all documentation may not be submitted or applicants may be rejected, there are also net goals for the number of applicants actually enrolled as members. Failure to meet these goals over a reasonable period of time is a factor in deciding whether to retain the employee. However, the productivity does not impact compensation as ESRs are not paid on commission.

Marketing Representatives do not report to the main office daily. Marketing Supervisors go to them in the field to give them their schedules for the next week. Approximately 70% of Marketing Representatives have a routine schedule of locations they visit regularly. One-time events, which occur more frequently in warmer weather, can be in the evenings and on the weekends. ESRs are not paid extra for evening and weekend work; rather, time at those events is incorporated into their 35 hour work week schedule. They receive 20 vacation days per year.

When Marketing Representatives are scheduled to work at HHC hospitals, they interact with HHC personnel in managed care offices regarding placement and scheduling. As there may be other plans present, the managed care office indicates where tables can be set up within the facility, which days are available, and on which days a marketing “blitz” is permitted. (Tr. 133.) Hospital personnel sometimes refer patients to MetroPlus. Some HHC employees are also facilitated enrollers. In most cases, HHC’s facilitated enrollers do not work in the same room as Marketing Representatives.

Three Marketing Representatives, all ESRs Level I, testified. The first had been assigned,

at various times, to a mall, a business district, supermarkets, and two medical clinics. At one of the medical clinics, he shared an office with HHC employees in the functional title of Financial Counselor, who participate in the HHC Options program for undocumented individuals. As MetroPlus programs are for documented individuals, the Marketing Representative and the Financial Counselors would exchange individuals based on whether they were documented. The Marketing Representative also interacted with administrative assistants, doctors, and nursing assistants; had occasional interaction with Systems Analysts regarding computers; and worked “alongside” HHC employees in the HCPPA title, with whom he attended community meetings and events. (Tr. 526.)

The second Marketing Representative testified that she works at Kings County Hospital Center, during the week and at either churches or a park on Saturdays. She interacts with HHC nurses, doctors, and clerks. She asks the clinic’s clerk which clients do not have insurance.

The third Marketing Representative testified that he works at the Jacobi Medical Center in the financial counseling room to which patients are referred if they do not have insurance or if their health insurance is not accepted at the facility. In certain months, he also goes to locations in the community every other weekend. At Jacobi Medical Center, he screens patients to see if they or their children are eligible for a MetroPlus plan or other insurance and, if not, for fee scaling, HHC Options, or Medicaid. Aside from him and two other Marketing Representatives, the remainder of employees in the financial counseling room are Clerical Associates Levels III and IV in the functional title of Financial Counselor, who do “basically . . . the same thing” except that they can assist illegal aliens over age 18 and give vouchers to the uninsured who require medication. (Tr. 702.) The Marketing Representatives and Financial Counselors work “hand in hand” as “one giant unit”: “We need them to do our job, and they need us in certain parts to do their job.” (Tr. 700.) If Financial Counselors are busy, the Marketing Representative will assist patients with changing

physicians. As a team leader and assistant supervisor of ESRs, he testified that similar daily interaction occurs between Marketing Representatives and Financial Counselors on other floors and in other buildings of Jacobi Medical Center. The Marketing Representatives receive referrals from the Financial Counselors and refer patients back to the Financial Counselors if the patients need to apply for fee scaling or HHC Options. Referrals are also received from and sent to the Medicaid Office at Jacobi Medical Center.

There are two Drivers in the Marketing Field Operations Unit. They provide support to the marketing staff by transporting materials and equipment, such as applications, brochures, literature, and— for outdoor events—tables and chairs, and assisting with setting up at health fairs and large events. They maintain the stock room and the vehicles, by taking them for oil changes, washes, and mechanic work, if needed. They do not transport ESRs.

Eleven Marketing Supervisors, mostly ESRs Level III, in the Marketing Field Operations Unit supervise teams of eight to eighteen ESRs. Marketing Supervisors assist their supervisors, Associate Directors in the functional title of Marketing Manager, with preparing the schedules of those ESRs. They do not have enrollment goals. Marketing Supervisors are required to have bachelor's degree or comparable level of knowledge and experience in a related field, three to five years of experience is marketing/sales or related fields, preferably in managed care, and three years of supervisory experience.

There is one Community Supervisor, an ESR Level III, in the Marketing Field Operations Unit. Her role is similar to the Marketing Supervisors. She oversees a team of ESRs who are marketing in various high traffic areas in the community. She does not have an enrollment goal.

The Event Specialist in the Event Planning Unit of the Marketing Division is an ESR Level III. He is responsible for coordinating large scale events and seeking out larger marketing

opportunities.

Recertification involves making sure the consumers are still eligible for their New York State-sponsored health care program. There are 29 Recertification Representatives in the Recertification Unit of the Marketing Division. In conjunction with the Customer Service and Community Relations Division's Customer Services Unit, they assist consumers with completing a recertification application through mailed packages and notices, phone calls, special organized events, home visits, and other meetings. Eleven of 12 Recertification Representatives assigned to HHC facilities have one or two HHC facility supervisors in addition to a MetroPlus supervisor. At Woodhull Medical and Mental Health Center, one of the supervisors is a Coordinating Manager; at Elmhurst Hospital Center, the facility supervisor is a Senior HCPPA.

One Recertification Representative, an ESR Assistant, testified that he is assigned to do research and recertification for Medicaid and Child Health Plus A at Lincoln Medical and Mental Health Center.⁷ In addition to reporting to a supervisor in MetroPlus's Recertification Unit, he reports to an HHC supervisor, the Senior Associate Director of the Managed Care Unit at Lincoln Medical and Mental Health Center. He is responsible for retaining Medicaid clients. Using an outreach database that contains personal information protected by the Health Insurance Portability and Accountability Act, he contacts clients to verify that they have received a package from Medicaid and to give them instructions on how to recertify over the phone or in person. He also generates retention reports, creates charts and graphs, and determines whether the members have provided the necessary paperwork, such as confirmation of income level, pregnancy, or increased rent.

⁷ Other Recertification Representatives handle recertifications for Child Health Plus B.

In the Community Service and Community Relations Division, ESRs work in (1) the Eligibility Unit (11 ESR Assistants in the functional titles of Eligibility Clerk, Customer Services Representative, Quality Assurance Representative, and Quality Assurance Coordinator; three ESRs Level I in the functional titles of Quality Assurance Representative, Eligibility Supervisor, and Evening Supervisor; four ESRs Level II in the functional titles of Eligibility Clerk, Eligibility Supervisor, Customer Services Supervisor, and Member Services Supervisor; and one ESR Level III in the functional title of Eligibility Data Integrity Unit Manager), (2) the Customer Services Unit (32 ESR Assistants in the functional titles of Customer Services Representative and Field Services Representative; 29 ESRs Level I in the functional titles of Customer Services Representative, Customer Services Team Leader, Customer Services Supervisor, and Complaints Team Leader; four ESRs Level II in the functional titles of Customer Services Team Leader, Customer Services Supervisor, Quality Assurance Analyst, and Quality Analyst; and two ESRs Level III in the functional titles of Customer Services Manager and Customer Services Representative), (3) the Customer Service Administration Unit (one ESR Assistant with no functional title and two ESRs Level I in the functional titles of Project Coordinator and Eligibility Clerk), and (4) the Community Relations Unit (one ESR Assistant in the functional title of Community Outreach Coordinator and one ESR Level II in the functional title of Community Relations Manager).

Completed applications are submitted to the Eligibility Unit, which has departments that do quality assurance and data entry of the application. There are two Customer Services Representatives, two Quality Assurance Representatives, one Quality Assurance Coordinator, and seven Eligibility Clerks, who are identified within the unit as Quality Assurance Coordinators. The Quality Assurance Coordinators review applications provided by Marketing Representatives to ensure that the information provided is accurate. These ESRs then give the applications to Clerical

Associates who do data entry. Five supervisory ESRs oversee the process. One supervisor works on data integrity and is responsible for reports and making changes to the databases. There is also one Eligibility Data Integrity Unit Manager. The ESRs in this unit interact with the ESRs in the Marketing Division when issues relating to applications arise. In addition, some supervisors in this unit deal with the Human Resources Administration (“HRA”).⁸ They may call supervisory employees at HRA to check on the status of a particular application. Some ESRs in this unit also contact Maximus, an enrollment broker for DOHMH for Medicaid Managed Care.

A Customer Services Representative in the Eligibility Unit, an ESR Assistant, testified that he spends half his day answering phone calls from prospective members and Marketing Representatives checking on the status of an application and half the day entering data, such as social security number, address, age, and immigration information, into the system. He prepares phone logs indicating the number of calls and the language used, documentation logs, and weekly reports. “Once in a blue moon,” he receives a call from HHC or HRA if a member has contacted them regarding disenrollment or missing documentation. (Tr. 639.)

The Member Services Supervisor in the Eligibility Unit, an ESR Level II who identified herself as a Data Integrity Unit Supervisor, testified that she maintains the electronic data system by correcting errors, such as an inaccurate effective date for a primary care physician change; running reports to disenroll or reinstate members; auditing the Data Entry Department to confirm that application information is entered properly; auditing the Quality Assurance Department to verify the

⁸ Some applications are forwarded to HRA. MetroPlus employees gather documents to prove eligibility, but HRA makes the final determination regarding Medicaid, Child Health Plus A, and Family Health Plus. MetroPlus can make the eligibility determination regarding Child Health Plus B. An uninsured person can receive Medicaid only at an HRA facility. A person who already has Medicaid and wants Medicaid Managed Care, a MetroPlus product that has different eligibility criteria than Medicaid, can not be enrolled in Medicaid Managed Care at HRA.

application information is correct; and comparing the data with information available on another system. She is privy to members' information such as social security numbers and dates of birth. She supervises two ESRs, who review applications and enter members' status changes, and reports to the Eligibility Data Integrity Unit Manager, an ESR Level III who handles disenrollments, resolves higher level errors, and prepares reports.

While some of the applications the Member Services Supervisor reviews were completed by facilitated enrollers at HHC, who submitted the applications to MetroPlus's Quality Assurance Unit, she does not interact with HHC employees outside MetroPlus. She has daily interaction with unionized data entry staff at MetroPlus and with HRA employees. She will send medical documentation of a member's need for "straight Medicaid" to the HRA supervisor who handles expedited disenrollment for medical reasons. (Tr. 620.) In reinstating members, she contacts another HRA employee to determine when the member lost coverage and if the member can be re-enrolled in the plan. She also contacts HRA employees to correct errors in the system made when HRA determined eligibility, such as the incorrect gender or health care program; to disenroll babies that were stillborn, underweight, or born with abnormalities; and to clarify which of a member's two identification numbers is the correct one.

The Customer Services Unit handles all member inquiries and complaints, as well as some provider inquiries. The 57 Customer Services Representatives have direct contact with the members by answering the phones, doing member orientations, processing primary care physician changes, and handling project assignments. They interact with ESRs in the Marketing Division when Marketing Representatives call from the field with questions they have received from members. The Customer Services Representatives also deal with Maximus employees and a few HRA employees, who call MetroPlus's 800 number. While most Customer Services Representatives work at 160

Water Street, three work at HHC facilities: Gouverneur Diagnostic and Treatment Center, Kings County Hospital Center, and Elmhurst Hospital Center. The one Complaints Team Leader and three Customer Services Team Leaders are responsible for overseeing the Customer Services Representatives regarding issues that may arise. Two Customer Services Supervisors are responsible for the day-to-day operations of the Team Leaders and the Customer Services Representatives. Two Quality Assurance Analysts silently monitor the calls of Customer Services Representatives to ensure that the information they provide is accurate. The Customer Services Manager is responsible for the total oversight of the unit and is required to have a bachelor's degree, supervisory experience, three years of progressive experience related to health care and/or managed care, and one year of customer service experience.

One Customer Services Representative, an ESR Assistant, testified that, while regularly assigned to 160 Water Street, he does a two-hour orientation session at varying HHC facilities approximately once a month like everyone in the Customer Services Unit. He provides members with information about doctors's phone numbers and specialities, primarily over the phone and, on occasion, when a member comes to the office. He also receives calls from staff at HHC facilities inquiring about a member's eligibility. He prepares weekly activity sheets of his work. He uses a computer to pull information about members and doctors and to log in his phone conversations and their outcomes.

In the Customer Service Administration Unit, one Project Coordinator, an ESR Level I, oversees the orientation process, ensuring that invitations and other materials are sent to members, and processes member disenrollments. She testified that she enters member ID numbers, addresses, and doctor's information into a databases; updates the inventory of member give-away items sent to orientation locations; reorders give-away items; does a mail merge in preparation for a monthly

mailing of fliers; and prepares Medicaid reports, daily inventory reports, and the monthly calendar assigning Customer Services Representatives to orientation sites.

Within MetroPlus, the Project Coordinator interacts with Assistant Systems Analysts, Senior Systems Analysts, and Supervising Systems Analysts approximately once a week when she calls them to assist her computer system problems. She also interacts with Clerical Associates, Computer Aides, and Assistant Coordinating Managers in the Data Integrity Unit and with Clerical Associates in the Quality Assurance Unit.⁹ Once or twice a week, she passes along information, such as a document missing from an application, to Clerical Associates in the Eligibility Unit. At HHC facilities, she interacts with Associate Managed Care Coordinators and Associate Directors. She contacts Assistant Coordinating Managers at various HHC facilities to set up a date and time for orientation. She interacts with a HCPPA who makes a health education presentation at orientation sessions run by ESRs.

The Community Relations Unit works closely with community-based organizations and other organizations to increase business for MetroPlus.

In the Medical Management Division, ESRs work in (1) the HIV Services Unit (one ESR Assistant in the functional title of Health Educator and one ESR Level III in the functional title of Manager/HIV) and (2) the Provider Services Unit (one ESR Assistant in the functional title of Administrative Assistant; one ESR Level I in the functional title of Provider Relations Representative; three ESRs Level II in the functional title of Provider Relations Representative; and two ESRs Level III in the functional title of Credentialing Coordinator).

In the Provider Services Unit, the four Provider Relations Representatives are responsible

⁹ The title Computer Aide is represented by DC 37 in a different bargaining unit from the one to which DC 37 seeks to add ESRs.

for providing education orientation to contractor providers, which includes medical providers such as physicians, nurses, hospitals, and laboratories; recruiting providers; and giving customer service to providers. They handle inquiries and problems, are involved in collecting information from the providers for the credentialing staff, and are the main contact with the provider groups. They are required to have a bachelor's degree in health care administration, marketing, or a related area of study and one year of experience in a managed care or provider organization. The two Credentialing Coordinators are responsible for collecting information from providers interested in joining the network and verifying their credentials according to a formal set of criteria. The credentials are then reviewed by a committee of physicians and senior level executive staff, who determine whether the provider will be brought into the network. For Credentialing Coordinators, prior experience with provider credentialing processes and procedures is required, and college course work and knowledge of HHC credentialing policies and procedures are preferred. The Administrative Assistant is responsible for administrative work regarding provider contracts and amendments. She works with provider offices to gather information necessary for the contract and is responsible for making sure that the documents are executed and then flow through the proper channels for implementation. ESRs in the Provider Services Unit interact with certain HHC employees, credentialing office staff, physicians, and administrative staff within the clinics.

One Provider Relations Representative, an ESR Level I, testified that, on average, he spends one day a week at his office and the remaining days working with providers in the field. He recruits providers, educates providers regarding MetroPlus's policies and procedures, conducts service visits at least quarterly, responds to providers' inquiries regarding reimbursement for their services, and follows up on members' complaints about providers. He is privy to physician's applications and the occasional malpractice suit. He prepares reports on his work and charts of the credentialing status

of the medical groups in the community. He reports to a Provider Relations Representative who is an ESR Level II, who in turn reports to the Director of Provider Services. He interacts with other departments within MetroPlus and with Managed Care Coordinators at HHC.

In the Corporate Affairs Division, one ESR Level III works in the Compliance Unit in the functional title of Compliance Audit Assistant. The MIS Division has one ESR Level I in the MIS Provider Maintenance and Production Unit working in the functional title of Clerk.

Unions' Bargaining Units

Forty-seven MetroPlus employees work in several unionized titles: Assistant Systems Analyst (18 employees), Systems Analyst (one employee), Senior Systems Analyst (one employee), and Supervising Systems Analyst (three employees) are represented by OSA; Clerical Associate Levels II (four employees) and III (13 employees) and Computer Aide Levels I (five employees) and II (one employee) are represented by DC 37; and Assistant Coordinating Manager (one employee) is represented by CWA.¹⁰

OSA's bargaining unit, Certification No. 3-88, includes the titles Assistant Systems Analyst, Systems Analyst, Senior Systems Analyst, Supervising Systems Analyst, Planning-Scheduling Analyst, Senior Planning-Scheduling Analyst, Senior HCPPA, Staff Analyst, and Associate Staff Analyst, among others. According to HHC's position description, an Assistant Systems Analyst is required to have a baccalaureate degree in certain fields or two years of training or education beyond

¹⁰ We take administrative notice of the fact that the title Senior Management Consultant (Business Organizations and Methods) is now represented by OSA and the title Coordinating Manager title is now represented by CWA. *See Org. of Staff Analysts*, Decision No. 1-2006 at 54; *Communications Workers of America*, Decision No. 3-2006 at 52. There was testimony that Senior Management Consultants and Coordinating Managers are employed at MetroPlus. However, as the titles were unrepresented at the time of the hearing, the numbers of employees in these titles at MetroPlus is not in the record.

the high school level and two years of experience in certain fields, or a satisfactory combination of the above. Both Systems Analysts and Senior Systems Analyst are required to have a baccalaureate degree in a relevant field and two years of experience in certain areas, or a satisfactory equivalent. A Supervising Systems Analyst is required to have a baccalaureate degree in a relevant field, three years of experience in certain areas, one of which is in a supervisory capacity, or a satisfactory combination of education training and experience. For Systems Analysts, Senior Systems Analysts, and Supervising Systems Analysts, a master's degree can be substituted for one year of experience. The salary range for an Assistant Systems Analyst is \$23,210 to \$49,424; for a Systems Analyst, \$25,117 to \$53,046; and for a Senior Systems Analyst, \$27,782 to \$59,677. The minimum salary for a Supervising Systems Analyst is \$39,113.

A Supervising Systems Analyst in Claims Department at MetroPlus testified that he does investigations to resolve complex claims submitted by doctors and hospitals, trains Systems Analysts to process claims, and enters data into the computer system. In resolving claims, he interacts with MetroPlus employees in the Provider Services Unit and the Eligibility Unit to verify the status of providers and members.

A Supervising Systems Analyst in the Finance Division of MetroPlus testified that she prepares monthly journal entries, wires payments to vendors, obtains bank account balances, inputs data, creates spreadsheets, prepares reconciliations, and assists with quarterly reports to HHC and yearly audits. The only other unionized employee in the division is a Systems Analyst.

A Supervising Systems Analyst in the Medical Staff Affairs Office at Coney Island Hospital sends information concerning physicians' credentials to MetroPlus and other HMOs. She interacts with two Credentialing Coordinators, both ESRs Level III, in the Provider Services Unit.

The HHC position description for a Planning-Scheduling Analyst indicates that a

baccalaureate degree and two years of experience in a certain area, or the equivalent training, education, and experience are required. The salary range is \$28,884 to \$53,046.

A former Planning-Scheduling Analyst testified that she worked in the pharmacy at Queens Hospital Center in the Indigent Program, which provides uninsured cancer patients with free medication. She gathered information from the patients or their medical files; completed and submitted pharmaceutical company applications; recertified patients every three or six months, depending on the pharmaceutical company; and directed patients to individuals who could help them apply for medical insurance.

A Senior Planning-Scheduling Analyst is required to have a baccalaureate degree in certain subjects and four years of experience in certain fields, or the satisfactory equivalent. The salary range is \$37,214 to \$68,203.

A Senior Planning-Scheduling Analyst in the Managed Care Office of the Queens Hospital Center testified that she sits at the front desk, answers calls, directs patients to the appropriate staff person, enters primary care physician changes into the system, contacts MetroPlus and other insurance plan to verify eligibility and to advocate on behalf of patients, fills out referrals, assists employees in completing applications, indicates the required documentation, and prepares reports of the number of patients she sees. She works with two Senior HCPPAs, one HCPPA, one PAA, two Clerical Associates, and two ESRs. The HCPPA and the PAA also do referrals and member services. The Clerical Associates enter data into the system and do referrals. One ESR supervises Marketing Representatives; the other is a Recertification Representative, an ESR Level II.

A Senior HCPPA is required to have a baccalaureate degree in certain subjects and four years experience in certain areas, a master's degree in certain subjects and three years of experience in certain areas, or a satisfactory equivalent. The salary range for a Senior HCPPA Level A is \$39,920

to \$79,297; for a Senior HCPPA Level B, \$43,979 to \$85,118.

A Senior HCPPA in the Managed Care Office at Harlem Hospital Center testified that she is one of three coordinators, all of whom are Senior HCPPAs, who use a computer system to identify in which health plan Medicaid patients are enrolled, educate patients about their managed care plans, deal with in-house referrals, and refer patients to the two employees in the Finance Department who handle applications for health plans. She reports to a Senior Management Consultant.

A Senior HCPPA in the Outpatient Finance Department at Elmhurst Hospital Center testified that she supervises the HHC Options Program for Medicaid, is the liaison with HRA, does quality assurance for applications that are being processed for HRA and MetroPlus, is involved in patient registration, and prepares monthly reports on the number of patients who are insured, uninsured, or undocumented. She submits work to MetroPlus weekly and has contact with an Eligibility Supervisor and an Eligibility Clerk, both of whom are ESRs Level II doing quality assurance, and with upper-level employees in the Recertification Unit.

This Senior HCPPA supervises approximately 19 employees in the titles Clerical Associate Level IV, HCPPA, Health Care Investigator, and ESR.¹¹ The ESR, a Level I, is a Recertification Representative responsible for recertifying MetroPlus members in Family Health Plus and Medicaid. A Clerical Associate Level IV, who testified, does recertification for MetroPlus members in Child Health Plus. She and two other Clerical Associates Level IV received two weeks of training at MetroPlus and are funded jointly by Elmhurst Hospital Center and MetroPlus; one Clerical Associate Level IV, who enrolls members at different sites within the community, is a MetroPlus employee. The 12 other Clerical Associates Level IV also complete applications for Medicaid, MetroPlus, and

¹¹ The HCPPA position is being filled. The previous incumbent performed the duties of the Senior HCPPA in her absence.

other health insurance plans and do recertifications.

The qualification requirements for a Staff Analyst are a master's degree in certain fields, a baccalaureate degree and two years of experience in certain areas, a high school diploma or its equivalent and six years of experience in certain areas, or the equivalent to one of the above. Assignment Level II requires an additional level of experience. The direct line of promotion is to Associate Staff Analyst. The salary range for a Staff Analyst Level I is \$37,923 to \$51,632; for a Staff Analyst Level II, \$44,037 to \$56,401; and for an Associate Staff Analyst, \$49,778 to \$74,118.

An Associate Staff Analyst at HRA testified that she works in the Medical Assistance Program in the Office of Program Development and Evaluation, which oversees the Contract Monitoring Unit and the Managed Care Client Services Unit. She helps oversee facilitated enrollers, which includes both health plans and community based organization. She oversees annual training for facilitated enrollers regarding HRA's application and renewal protocol and tracking system; ensures that facilitated enrollers are informed of protocol changes and any problems with the tracking system; coordinates with the New York State Department of Health to make sure contracts are in place for health plans wishing to join the facilitated enroller program; answers calls from facilitated enrollers; and oversees a call center for providers, pharmacies, consumers, and, to a lesser extent, health plans.

DC 37's bargaining unit, Certification No. 46C-75, includes, among others, the titles Clerical Associate, Eligibility Specialist, and Call Center Representative. The clerical bargaining unit includes approximately 20,000 employees, of which 5,000 are employed at HHC. HHC's position description for Clerical Associates lists the qualification requirements as a high school diploma, or its equivalent, and one year of satisfactory clerical experience. One line of promotion is to PAA. The salary range for a Clerical Associate Level Ia is \$21,245 to \$27,576; for a Clerical Associate

Level Ib, \$21,963 to \$32,077; for a Clerical Associate Level II, \$23,671 to \$32,864; for a Clerical Associate Level III, \$26,228 to \$39,588; for a Clerical Associate Level IV, \$28,837 to \$42,184; and for a Clerical Associate Level IVa, \$33,066 to \$45,136.

Some Clerical Associates work in MetroPlus's Customer Service and Community Relations Division. They stamp in the mail and they do some data entry of return mail. There are approximately seven Clerical Associates in the Eligibility Unit.

One Clerical Associate Level III employed at MetroPlus in the Eligibility Unit testified that the Quality Assurance Department provides her with Access New York Medicaid and Family Health Plus applications received from the Marketing Division and facility sites, that she enters the data into a computer system and separates completed applications from incomplete applications, and that the Imaging Department collects the applications. Her supervisor is also a Clerical Associate Level III. She interacts with ESRs in her unit: If she has questions regarding an application, she will ask the Quality Assurance Representative, Eligibility Clerk, or Eligibility Supervisor who gave her the application. Similarly, when she receives HRA's written responses to completed applications, she will separate the eligibility determinations from the rejections and give the rejections to the Eligibility Data Integrity Unit Manager.

Clerical Associates are also employed at HHC facilities. A job posting for three Clerical Associate IV positions in the Finance/Business Office of Coney Island Hospital indicates that the major task, duties and responsibilities include "[p]rovid[ing] assistance to patients applying for Medicaid, Family Health Plus or Child Health Plus." (DC 37 Ex. 5.)

A Clerical Associate Level III employed in the Registration Office at Gouverneur Health Care Services testified that she opens charts for new patients, provides financial counseling, and helps patients complete Access New York applications for Medicaid and MetroPlus's Family Health

Plus. Prior to the hiring of temps, she spent one or two hours a day calling “self-pay” patients who have scheduled a doctor’s appointment to ask them to apply for insurance, bring the appropriate documentation, and meet with her before or after the appointment. (Tr. 815.) During the meeting, she asks personal questions, reviews patients’ documentation, provides a list of required documentation if necessary, and consults income guidelines to verify whether they qualify. If the applicant qualifies, she fills out the application, they both sign, and she submits it to a Community Liaison, an HHC employee, in Financial Services. She spends approximately three or four hours a day completing Access New York applications. The other employees in the Registration Office are also Clerical Associates Level III; however, she is the only one who completes the applications. She received two weeks of facilitated enrollment training at MetroPlus’s office. She reports to a Coordinating Manager.

A Clerical Associate Level IV testified that he works as a Financial Counselor at the Jacobi Medical Center in a room with ESRs and other Financial Counselors. He receives patient referrals from the hospital’s clinics; determines their eligibility for Medicaid, Medicare, Blue Cross/Blue Shield, vouchers, and HMOs; collects the patients’ documentation; and assists patients in completing Medicaid applications. Throughout the Jacobi Medical Center, the Financial Counselors “work very closely” with ESRs by referring patients so that ESRs can enroll them in insurance programs. (Tr. 733.) Responsible for more duties than ESRs, the Financial Counselors also dispense medication vouchers, call HMOs and doctors, switch doctors, resolve billing problems, provide fee scaling, and enroll undocumented patients in the HHC Options Program. The Financial Counselors are supervised by a PAA, who makes sure that they are following guidelines and procedures.

A Clerical Associate Level IV employed at the Flatbush Health Center affiliated with Kings County Hospital Center testified that she registers patients, processes fee scaling for undocumented

patients, reviews patients' documentation, helps patients complete Access New York applications for Medicaid, and forwards completed applications to the Medicaid Office at Kings County Hospital Center. Until recently, she referred patients interested in enrolling in Family Health Plus to a Marketing Representative, who was on-site several days a week. In the ESR's absence, patients interested in Family Health Plus are referred to Kings County Hospital Center.

Another Clerical Associate Level IV employed at three different clinics affiliated with Kings County Hospital Center performs similar work. While she has registration and cashier duties, she spends most of her time on financial counseling: requesting and reviewing documentation, assisting with the Access New York applications, and fee scaling. She interacts with MetroPlus Marketing Representatives located in the lobby of the East New York clinic she attends three days a week. She discusses different applications with them and refers uninsured patients, approximately twice a day, when she is unavailable.

Clerical Associates also work for HRA. A Clerical Associate Level III employed in the Managed Care Department at HRA testified that he spends ten percent of his day responding to calls from various HMOs, including MetroPlus, to verify whether their members are enrolled. He obtains this information from a database. He interacts with the Member Services Supervisor in the Eligibility Unit, an ESR II, two or three times a day and sometimes receives calls from other MetroPlus employees. He also receives enrollment forms from HRA case workers at different hospitals to enroll consumers into a family health plan and enters the information into a database. His supervisor, a PAA, compiles reports of his work.

The duties and responsibilities of an Eligibility Specialist include "determination and verification of initial and continuing eligibility for Public Assistance, including Income Maintenance, Medicaid, Emergency Housing Services and/or Food Stamps." (DC 37's Motion to Intervene Ex.

E.) DC 37's clerical bargaining unit's collective bargaining agreement provides that employees in the title Eligibility Specialist Level II be paid a \$1,000 assignment differential "while assigned on a regular basis to perform duties related to the 'Family Health Plus Program' and 'Child Health Plus Program' in the Community Applications Offices and Central Eligibility Division of HRA's Medical Assistance Program." (DC 37 Ex. 7 at 25.) The qualification requirements for Eligibility Specialists are (a) 60 college credits; (b) a high school diploma, or its equivalent, and experience as a Police Administrative Aide or two years of satisfactory experience in specified areas, or (c) a satisfactory combination of education and experience equivalent to that in (a) or (b). The line of promotion is to PAA. The salary range for an Eligibility Specialist Level I is \$26,228 to \$37,087; for an Eligibility Specialist Level II, \$27,201 to \$38,306; and for an Eligibility Specialist Level III, \$28,872 to \$39,881.

An Eligibility Specialist Level I at HRA testified that works at the HRA help line. She prescreens individuals interested in whether they are eligible for Medicaid or Family Health Plus; enters the information into a computer, which prints and mails an application; responds to inquiries regarding the status of Medicaid files; enters address changes; sends recertification applications; makes a record of clients not receiving Medicaid despite submitting their surplus payment; and answers questions regarding Medicaid. When clients have questions that cannot be answered in three to five minutes, she refers them to a facilitated enroller, such as MetroPlus or another HMO. When clients are not already enrolled in one of the HMO plans, HRA refers them to any facilitated enroller operating in their borough. She submits a daily log to her supervisor, a PAA Level I, who will answer calls if there a large number.

An Eligibility Specialist Level II at HRA testified that she works at the Medicaid Office at Metropolitan Hospital Center with six other Eligibility Specialists, two supervisors, a PAA Level

I and a PAA Level II, and a site manager, a PAA Level II. She interviews clients, reviews Access New York applications and documentation, requests additional documentation if necessary, enters data into the computer system, uses an income form to determine whether clients are eligible for Medicaid or Family Health Plus, compares information with that in the unemployment insurance database, sends letters notifying clients of the eligibility determination. She enrolls approximately 80% of the clients eligible for an HMO in MetroPlus since Metropolitan Hospital Center is their primary hospital. The supervisors sign off on the cases and makes sure the cases go through the system. The Eligibility Specialist does not interact with MetroPlus or HHC employees.

An HRA Eligibility Specialist Level II assigned to the Medicaid Office at North Central Bronx Hospital testified that she is one of six Eligibility Specialists supervised by a PAA Level I. She reviews applications completed by patients and members of the community, reviews their documentation, enters information into the system, does a budget analysis to determine if individuals are eligible for Medicaid or Family Health Plus, sends letters to the clients, and submits completed applications to her supervisor. When clients are eligible for Family Health Plus, she can sign them up for MetroPlus or another HMO using a form submitted to the HMO. She also acts as a receptionist, verifies if cases are active, issues temporary Medicaid cards, and changes addresses. While there are MetroPlus employees in the hallway, she does not interact with them.

An Eligibility Specialist Level III at HRA testified that she works in the Medicaid Office in the Office of Mail Recertification. For disabled and elderly clients, she mails Medicaid annual recertification applications, calls or writes if applications are incomplete, reviews completed applications and documentation, uses a computer to calculate eligibility, sends written notification, and enters the data into a computer database. Her supervisor, a PAA Level I, reviews her files and her calculations. Others in the office work on Family Health Plus.

The position description for Call Center Representative identifies the qualification requirements as (a) a baccalaureate degree, (b) a college associate degree and one year of experience in customer service or public relations, or (c) a high school diploma, or its equivalent, and two years of experience.

A Call Center Representative working at the Department of Information Technology and Telecommunications testified that she answers the public's calls to the City's 311 line and uses a database to access information.

CWA's bargaining unit, Certification No. 41-73, includes the titles PAA, HCPPA, and Assistant Coordinating Manager, among others. CWA represents 990 PAAs, HCPPAs, and Assistant Coordinating Managers at HHC as well as thousands of employees in those titles and other administrative/supervisory positions in various City agencies, including HRA.

According to the position description, the duties and responsibilities of a PAA include supervisory or administrative work. The qualification requirements are (a) a baccalaureate degree and three years of experience, (b) an associate degree and four years of experience, (c) a high school diploma, or its equivalent, and five years of experience, or (d) education and experience equivalent to the above. The salary range for a PAA Level I is \$33,22 to \$48,665; for a PAA Level II, \$37,171 to \$54,033; and for a Level III, \$41,120 to \$62,842.

The purpose of the HCPPA position is, among other things, to plan, design, or evaluate programs related to health care services. The salary range is \$31,950 to \$59,677.

The purpose of the Assistant Coordinating Manager position is to assist with the planning and coordinating of administrative and office operations. An Assistant Coordinating Manager is required to have (a) a baccalaureate degree and one year of experience or (b) a satisfactory combination of education, training, and experience. The salary range is \$33,222 to \$55,452.

POSITIONS OF THE PARTIES

HHC's Position

HHC argues that employees in the ESR titles are confidential and should, therefore, be excluded from collective bargaining. MetroPlus is unique in that it is a growing business in a highly competitive industry. In order to successfully compete, MetroPlus gives ESRs confidential information regarding its sales operation, specifically outreach and marketing strategies based on marketing research, that would harm MetroPlus if obtained by its competitors. DC 37 and other members of the Municipal Labor Committee sit on the Board of Directors of MetroPlus's main competitors, GHI and HIP.¹² HHC claims that if ESRs are represented by a union that is a member of the Municipal Labor Committee, GHI and HIP could potentially obtain confidential information regarding MetroPlus.

HHC also claims that MetroPlus is a direct actor in labor relations because it participates in the labor/management committee's request for proposals process. Further, HHC asserts that the confidential marketing information to which ESRs have access is related to labor relations, specifically health benefits and how those benefits are offered to HHC employees. Health benefits are a mandatory subject of bargaining. The Unions are members of the Municipal Labor Committee, which is involved in the request for proposals selection process. HHC argues that ESRs possess confidential information that could influence the labor/management committee's selection or rejection of MetroPlus.

¹² In its post-hearing brief, HHC notes that HIP and GHI are in the process of merging.

Given the Unions' relationships with MetroPlus's competitors and the Municipal Labor Committee, HHC argues that the inclusion of ESRs in collective bargaining would create potential conflicts of interests inimical to the collective bargaining process and the full and fair representation of HHC's interests. According to HHC, the failure to find ESRs confidential would violate the law and public policy.

In the event that the Board rejects HHC's confidentiality argument, HHC takes no position on which of the three unions should represent the titles.

OSA's Position

OSA asserts that ESRs are eligible for bargaining as HHC has failed to sustain its burden of proving that any ESR has access to confidential information concerning labor relations or personnel matters. According to OSA, HHC's bizarre confidentiality argument is farfetched as it assumes that an ESR would approach a union president for the purpose of getting the Municipal Labor Committee to reject their own employer's bid. Further, HHC's one witness on the issue failed to present any proof that ESRs have confidential information relating to marketing, let alone labor relations.

OSA argues that ESRs should be in a separate bargaining unit because of the structure of MetroPlus and the duties and responsibilities of ESRs. MetroPlus is a unique and cohesive entity with its own training manual, employee handbook, operating procedures, and, in the marketing department, a confidentiality oath, which is a unique requirement in City and HHC employment. The ESR titles are unique to MetroPlus. ESRs identify themselves as MetroPlus employees and have little interaction with non-MetroPlus employees. According to OSA, a separate bargaining unit will assure the fullest freedom in the exercise of ESRs' collective bargaining rights as OSA is the only union to have submitted a showing that at least 30% of ESRs wish to be represented by OSA. The other two unions have a more difficult threshold of proof to overcome the presumption that the

employees who signed dues checkoff cards want to be represented by OSA. ESRs have a strong community of interest with each other as they all identify themselves as MetroPlus employees and are covered by one position description. The separate identity of MetroPlus suggests that a separate unit would be good for both labor relations and the efficient operation of MetroPlus. Further, a separate bargaining unit would be consistent with Board decisions. Accordingly, a separate bargaining unit is appropriate, and an election should be held with only OSA on the ballot. Any other union wishing to appear on the ballot must present a showing of interest of at least 10%.

In the alternative, OSA argues that ESRs should be accreted to OSA's bargaining unit as ESRs have a community of interest with the titles in OSA's bargaining unit. There is interchange among ESRs and Systems Analysts, Senior Systems Analysts, Staff Analysts, Associate Staff Analysts, Senior HCPPAs, Planning-Schedule Analysts, and Senior Planning-Scheduling Analysts, and their wage rates overlap. Further, there are MetroPlus employees in the titles Assistant Systems Analyst, Senior Systems Analyst, and Supervising Systems Analyst.

As another alternative, OSA contends that a self-determination election should be held for ESRs to choose between representation by OSA or DC 37 since some of the duties of some ESRs match some of the duties of employees represented by OSA and DC 37. Some ESRs prepare and submit reports, do analysis, prepare graphs, and determine effective marketing strategies, all of which are major components of work performed by OSA members. For many ESR positions as well as for titles represented by OSA, a college degree is preferred, but not required. Many employees represented by OSA earn salaries within the same range as ESRs. While some of DC 37's Clerical Associates perform some duties of the ESRs, their main functions include duties not performed by ESRs. Several DC 37 members had never heard of MetroPlus or interacted with ESRs. Those who did have some interaction with ESRs were limited to exchanging referrals or phone calls. ESRs

employed as marketing representatives have field assignments, unlike employees represented by DC 37 or CWA. According to OSA, the community of interest with CWA employees is so negligible that they should not be able to participate in any election.

DC 37's Position

DC 37 asserts that ESRs are not confidential employees. Even if employees in the ESR titles had access to information that could help competitors, they would not qualify as confidential under the standards of the New York City Office of Collective Bargaining, the New York State Public Employment Relations Board (“PERB”), or the National Labor Relations Board (“NLRB”). HHC has not shown that ESRs have access to confidential information concerning labor relations or that they assist a managerial employee who does. As indicated by the Associate Executive Director of Marketing, there is “limited to no opportunity” to market to HHC employees. (Tr. 431.) At most, ESRs can provide information regarding MetroPlus health plans to HHC employees only upon request. ESRs do not have the opportunity to have an impact on labor relations matters.

DC 37 contends that a separate bargaining unit is contrary to the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) and Board policy. According to DC 37, the creation of a separate bargaining unit would violate the Board’s longstanding policy against fragmentation of bargaining units and would not have a positive effect on either the efficient delivery of essential public service provided by ESRs or the administration of sound labor relations. DC 37 notes that MetroPlus employs other union members, some of whom perform tasks identical to those of ESRs. MetroPlus employees can transfer to other parts of HHC and are subject to HHC’s Rules and Regulations.

DC 37 argues that ESRs should be accreted to its Clerical Unit, rather than either OSA’s or CWA’s bargaining units, because the ESR titles share a strong community of interest with certain

positions in the Clerical Unit, which has a history of bargaining over compensation for tasks similar to those of ESRs. According to DC 37, Clerical Associates and Eligibility Specialists (“Clericals”) employed by HHC and HRA in facilities throughout the HHC system perform identical and similar tasks to more than 95% of ESRs. Like those ESRs in the Marketing Representative and Marketing Supervisor positions, who comprise approximately 60.1% of all ESRs, the Clericals use Access New York application to enroll people in New York State-sponsored health care plans, including MetroPlus’s plan; receive New York State mandated training; are assigned to various HHC facilities and to locations within the community; and perform outreach. Similarly, Clericals perform identical or similar tasks to ESRs in the Customer Services Representative (22.3 % of ESRs), Recertification Representative (9.8% of ESRs), and Quality Assurance Coordinator or Representative positions (3.4% of ESRs). The Clericals and ESRs both serve in the functional title Eligibility Clerk and perform identical tasks. DC 37 asserts that there is a great deal of contact between ESRs and the Clericals at HHC’s Central Office and through HHC facilities as they sometimes work quite closely and occupy the same office space. ESRs and Clericals at HRA also have daily contact. The wage ranges for ESRs and the Clericals are comparable. The qualification requirements of ESRs, a high school diploma or its equivalent and one year of experience, are identical to those of Clerical Associates and similar to those of Eligibility Specialists. As indicated by the pay differential for Eligibility Specialists who perform duties relating to the Family Health Plus and Child Health Plus programs, DC 37 has experience negotiating over workplace issues involving the programs that are the focus of ESRs’ duties.

CWA’s Position

CWA contends that ESRs are not confidential. While the marketing division has meetings regarding how to get the target population to sign up for MetroPlus health plans rather than HIP or

GHI, no marketing is done to HHC employees. The head of the marketing division himself did not even have indirect access to confidential labor relations information. He was not involved with negotiations with the health benefit committee of the municipal labor committee regarding solicitation to HHC employees and did not know who was involved with those negotiations. This is insufficient to deny all ESRs, including those who drive marketers to advertising sites, the right of collective bargaining. CWA asserted that HHC should be ordered to pay attorneys' fees to all union counsel for causing them to defend a claim with neither legal nor factual basis and for not withdrawing its confidentiality claim when it could not produce factual evidence to support its allegations.

According to CWA, ESRs Level II and III should be in a separate bargaining unit from the employees they supervise, ESR Assistants and ESRs Level I. According to CWA, the Board should not hesitate to split the title because of the supervisory duties of ESRs Level II and III. Further, CWA asserts that it makes more sense for the departments to separate ESRs Level II and III from the employees they supervise.

CWA argues that ESRs Level II and III should be accreted to its bargaining unit because they share a community of interest with PAAs, HCPPAs, and Assistant Coordinating Managers. All of these jobs have either supervisory responsibilities or a high level administrative tasks. ESRs in the Marketing Supervisor or Customer Services Supervisor positions oversee the ESRs Level I and Assistant ESRs much as the PAAs supervise Eligibility Specialists, represented by DC 37. ESRs in the Manager positions, all of whom are Level III, run the entire department. Other ESR Level II and III positions, such as Credentialing Coordinator and Event Specialist, require higher level administrative work, unlike work performed by DC 37's members. College or equivalent experience is preferred for these positions. PAAs have the same range of wages as ESRs Level II and III. The

ESRs Level II and III do not share a community of interest with DC 37, whose members are more like ESRs Level I and Assistant ESRs, or with OSA, whose members are at a higher job level.

DISCUSSION

In this case, we must determine whether ESRs are eligible for collective bargaining and, if so, whether it is appropriate to separate ESR Assistants and ESRs Level I from ESRs Levels II and III, to create a separate bargaining unit for ESRs, or to accrete ESRs to an existing bargaining unit.

Eligibility

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 (N.Y. Civil Service Law Article 14). *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).

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; *New York City Dep't of Investigation Investigator's Ass'n*, Decision No. 2-2003 at 18. 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.

Thus, the Board has found that employees who assist negotiators by calculating the cost of collective bargaining proposals and union demands are confidential. See *Org. of Staff Analysts*, Decision No. 1-2006 at 9-12. Similarly, employees who provide confidential assistance to managers in Human Resources departments have been found confidential. See *Communications Workers of America, Local 1180*, Decision No. 3-2006 at 12-26. However, employees who have sensitive, personal information regarding investigations of City employees and the public have been found eligible for collective bargaining. See *New York City Dep't of Investigation Investigator's Ass'n*, Decision No. 2-2003 at 18; *Ass'n of New York City Assistant Dist. Attorneys*, Decision No. 13-74 at 26.

Applying the standard set forth in the NYCCBL and the Taylor Law, we find that ESRs are eligible for collective bargaining as they do not assist and act in a confidential capacity to a manager who directly assists in the preparation for and conduct of collective bargaining negotiations or has

a major role in the administration of collective bargaining agreements or personnel administration. Even assuming *arguendo* that some ESRs, those in the Marketing Division, assist and act in a confidential capacity to the Associate Executive Director of Marketing, those ESRs cannot be excluded from collective bargaining because there is no evidence that the Associate Executive Director of Marketing is involved in collective bargaining negotiations or has a significant role in the administration of collective bargaining agreements or personnel administration. The marketing research and enrollment strategy information to which some ESRs are privy is unrelated to labor relations as it concerns marketing to the uninsured and Medicaid consumers eligible for MetroPlus's New York State-sponsored health insurance programs. Limited to no marketing is done to HHC employees. At most, some ESRs provide some HHC employees with brochures upon request during the annual transfer period. This is insufficient to establish any involvement in labor relations.

The speculative claims that the unionization of ESRs could result in the leaking of marketing information to MetroPlus's competitors and could influence the labor/management committee's selection or rejection of MetroPlus neither justify a confidential designation nor merit finding a violation of public policy.¹³ The United States Supreme Court has held that the NLRB has a reasonable basis for its long-standing practice of excluding from collective bargaining only confidential employees who satisfy its "labor nexus test," in other words, "those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *NLRB v. Hendricks County Rural Elec. Membership Corp.*, 454 U.S. 170, 189-190 (1981) (quoting *B. F. Goodrich Co.*, 115 N.L.R.B. 722, 724 (1956)). In so ruling, the Court rejected the contention that the definition of confidential should

¹³ While HHC's confidentiality argument is without merit, it is not our practice to award attorneys' fees, as requested by CWA.

be expanded “to include all employees in possession of confidential business information.” *Id.* at 191; *see also NLRB v. Meenan Oil Co., L.P.*, 139 F. 3d 311, 317 (2d Cir. 1998) (“[E]mployees who have access to confidential business information are not for that reason excludible from collective-bargaining units.”); *Westinghouse Elec. Co. v. NLRB*, 398 F.2d 669, 671 (6th Cir. 1968) (noting that “an employee may not be excluded from the appropriate bargaining unit merely because he has access to confidential information concerning the employer’s internal business operations and which is not related to the field of labor relations”); *NLRB v. Armour & Co.*, 154 F.2d 570, 574 (10th Cir. 1945) (finding representation of plant clerks appropriate even though “the knowledge which the plant clerks obtain is of a highly confidential nature and ... its disclosure to competitors of Armour might result in injury to Armour”); *NLRB v. Poultrymen’s Serv. Corp.*, 138 F. 2d 204, 211 (3d Cir. 1943) (finding the NLRB’s labor nexus test sound since “[p]ossession of confidential information is of itself insufficient to justify deprivation of the right to collective bargaining”). As this Board has previously noted, “mere membership in a union neither presents the appearance of a conflict nor is a conflict with the employee’s responsibility to perform assigned duties.” *New York City Dep’t of Investigation Investigator’s Ass’n*, Decision No. 2-2003 at 19 (rejecting the argument that representation of Confidential Investigators and Special Investigators is contrary to public policy because the agency’s mission and employees’ performance would be impaired); *see also Ass’n of New York City Assistant Dist. Attorneys*, Decision No. 13-74 at 25.

Appropriate Bargaining Unit

Section 12-309(b)(1) of the NYCCBL provides that this Board shall have the power and duty:

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

involving a petition for certification where supervisory or professional employees petition to be represented for purposes of collective bargaining separate and apart from non-supervisory or non-professional employees, or where a petition for certification has been filed requesting a unit of supervisory and non-supervisory or a unit of professional and non-professional employees *and the public employer objects thereto*, the board of certification shall not include such supervisory or professional employees in a bargaining unit which includes non-supervisory or non-professional employees respectively unless a majority of the supervisory or professional employees voting in an election vote in favor thereof. (Emphasis added.)

Section 1-02(k) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) (“OCB Rules”), which is designed to implement NYCCBL §12-309(b)(1), sets forth criteria that we apply in making determinations of appropriate unit placement of employees. OCB Rule § 1-02(k) provides:

In determining appropriate bargaining units, the Board will consider, among other factors:

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

When deciding whether there is a community of interest, we consider a number of factors, including but not limited to: (a) the job duties and responsibilities of the employees; (b) their qualifications, skills, and training; (c) interchange and contact; (d) wage rates; (e) lines of promotion;

and (f) organization or supervision of the department, office, or other subdivision. *See, e.g. Local 508, District Council 37, AFSCME*, Decision No. 16-93 at 24; *Unif. Firefighters Ass'n*, Decision No. 7-91 at 24; *Corr. Captains Ass'n*, Decision No. 11-90 at 22-23. This list is not exclusive and none of the factors necessarily is controlling. We consider each case individually and balance the various factors to determine where the greater community of interest lies.

As a preliminary matter, we reject CWA's claim that ESRs Levels II and III should not be included in the same bargaining unit as ESR Assistants and ESRs Level I because that would be combining supervisory and non-supervisory employees. HHC has not objected to the inclusion of supervisory and non-supervisory employees in the same bargaining unit. Absent such an objection, NYCCBL § 12-309(b)(1) expressly allows the combination of supervisory and non-supervisory employees in the same bargaining unit. *Local 371, Soc. Serv. Employees Union, District Council 37, AFSCME*, Decision No. 1-2005 at 29; *Lara*, Decision No. B-47-91 at 9. We do not find that the inclusion of all ESR levels in the same bargaining unit would prejudice the employees or the Unions. *See, e.g., District Council 37, AFSCME*, Decision No. 46-75 at 8 (creating bargaining units with supervisory and non-supervisory employees).

The duties and responsibilities of ESRs demonstrate the inappropriateness of splitting the title by level. Not all ESRs Levels II and III have supervisory functions, and some ESRs Level I do have supervisory responsibilities.¹⁴ For example, in the Marketing Division, the functional title of Marketing Representative is held by all ESRs, ESR Assistants and ESRs Levels I, II, and III, and the functional title of Recertification Representative is held by ESRs Level I and II. In the Customer

¹⁴ According to the ESR position description, while ESRs Level II "act as perceptor" [sic] to subordinate ESRs "to facilitate their understanding of MetroPlus objectives, operations and site specific information," only ESRs Level III regularly supervise other ESRs.

Service and Community Relations Division, the functional title of Customer Services Representative is held by an ESR Level III as well as by ESR Assistants and ESRs Level I, the functional titles of Customer Services Supervisor and Customer Services Team Leader are held by ESRs Level I and II, and the functional title of Eligibility Clerk is held by ESR Assistants and ESRs Level I and II. Similarly, in the Medical Management Division, the functional title of Provider Relations Representative is held by ESRs Level I and II. Given the overlap within functional titles, separating ESRs Level II and III from ESR Assistants and ESRs Level I would be arbitrary and not conducive to sound labor relations.

We find that a separate bargaining unit for ESRs, requested by OSA, is not appropriate. Neither MetroPlus nor the duties of ESRs are so unique as to warrant the creation of a separate bargaining unit. MetroPlus already employs several citywide titles, and ESRs' tasks are similar to those of other HHC employees and HRA employees. Further, some ESRs interact with HHC and City employees. For example, Marketing Representatives receive training from DOHMH. Marketing Representatives and Recertification Representatives exchange patient referrals with HHC and HRA employees. Supervisors in the Eligibility Unit resolve errors with HRA employees.

In light of our longstanding policy against the proliferation of bargaining units, we have found a separate bargaining unit inappropriate when accretion would be appropriate. *See Local 144, SEIU*, Decision No. 1-91 at 20-21 (finding accretion more appropriate than a separate bargaining unit when no grounds sufficiently “outweigh the adverse effect that the creation of a separate bargaining unit would have on the efficient operation of the public service and sound labor relations”); *see also New York State Nurses Ass’n*, Decision No. 2-94 at 49 (finding a separate bargaining unit inappropriate when the employees' interests can be addressed within one of the existing bargaining units); *cf. Civil Serv. Technical Guild, Local 375, AFSCME*, Decision No. 21-87 at 23-24 (finding

a separate bargaining unit appropriate for a citywide title when accretion would be inappropriate). Here, accretion to any of the three existing bargaining units would be appropriate. Taken as a whole, the factors we consider do not weigh in favor of one bargaining unit over the others. ESRs share a community of interest with employees in each of the three bargaining units.

The job duties and responsibilities of ESRs are similar to those of the titles represented by the Unions. Like ESRs in the functional title of Marketing Representative, Eligibility Specialists and Clerical Associates, represented by DC 37, meet with uninsured patients, request and review documents, determine eligibility, and use Access New York applications to enroll eligible patients in New York State-sponsored health plans. A Senior Planning-Scheduling Analyst, represented by OSA, also requests documentation and assists patients completing applications. Like ESRs in the functional title of Recertification Representative, Eligibility Specialists and Clerical Associates determine continued eligibility and recertify members in their health plans. ESRs in the functional titles of Marketing Supervisor and Community Supervisor oversee teams of ESRs in the functional title of Marketing Representative just as PAAs and a Coordinating Manager, represented by CWA, supervise Clerical Associates and/or Eligibility Specialists. Similarly, a Senior HCPPA, represented by OSA, supervises an ESR in the functional title of Recertification Representative, Clerical Associates, and a HCPPA, represented by CWA. Like ESRs in the functional title of Customer Services Representative, Eligibility Specialists and Clerical Associates answer calls regarding enrollment status, process primary care physician changes, and enter changes of address. A Senior Planning-Scheduling Analyst, a PAA, and a HCPPA also provide member services. Eligibility Specialists and Clerical Associates are supervised by PAAs, as ESRs in the functional title of Customer Services Representative are supervised by ESRs in the functional titles of Customer Services Supervisor, Customer Services Team Leader, Complaints Team Leader, and Customer

Services Manager. Like ESRs in the functional titles of Quality Assurance Representative, Quality Assurance Coordinator, and Eligibility Clerk, a Senior HCPPA does quality assurance of MetroPlus applications. While each title also performs tasks that the others do not, there is a significant overlap in duties. *See Local 371, Soc. Serv. Employees Union, District Council 37, AFSCME*, Decision No. 1-2005 at 27 (finding accretion appropriate to bargaining units with titles whose tasks include some of those of the petitioned-for titles); *Communications Workers of America*, Decision No. 11-90 at 26 (finding accretion to any of the three proposed bargaining units appropriate when each of the unions represented employees doing some of the tasks of the title at issue).

The qualifications, skills, and training of ESRs and the Unions' members are not significantly different. The requirements for ESRs range from a high school diploma or its equivalent, for ESR Assistants, to three years of experience and either a high school diploma, its equivalent, or a three month training program, for ESRs Level III. A bachelor's degree is preferred for the functional title of Marketing Representative and required for the functional titles of Marketing Supervisor, Customer Services Manager, and Provider Relations Representative. Marketing Representatives participate in a five-week training program to become facilitated enrollers. The requirements for the DC 37 titles range from a high school diploma and one year of experience, for Clerical Associates, to a high school diploma and two years of experience, for Eligibility Specialists and Call Center Representatives. Some Clerical Associates have participated in a two-week facilitated enroller training program at MetroPlus. The requirements for OSA titles range from two years of education and training beyond high school and two years of experience, for an Assistant Systems Analyst, to a high school diploma and six years of experience, for a Staff Analyst. The requirements for CWA titles range from a baccalaureate degree and one year of experience, for an Assistant Coordinating Manager, to a high school diploma and five years of experience, for a PAA. As the requirements

for ESRs are closest to the requirements for the DC 37 titles and some Clerical Associates receive some of the facilitated enrollment training given to ESRs in the functional title of Marketing Representative, this factor weighs in favor of DC 37. However, it does not outweigh the extensive evidence that ESRs share a community of interest with titles in all three bargaining units.

There is considerable interchange and contact between ESRs and the members of the three bargaining units. At several HHC facilities, ESRs in the functional title of Marketing Representative work and exchange patient referrals with Clerical Associates, represented by DC 37. One Marketing Representative has occasional interaction with Systems Analysts, represented by OSA, and works alongside a HCPPA, represented by CWA. At Queens Hospital Center, two ESRs in the functional titles of Marketing Supervisor and Recertification Representative are working with a Senior Planning-Scheduling Analyst and two Senior HCPPAs, represented by OSA, two Clerical Associates, represented by DC 37, and a HCPPA and a PAA, represented by CWA. At Elmhurst Hospital Center, an ESR in the functional title of Recertification Representative is supervised by a Senior HCPPA, represented by OSA, and works with Clerical Associates, represented by DC 37, and a HCPPA, represented by CWA. A Recertification Representative at Woodhull Medical and Mental Health Center is supervised by a Coordinating Manager, represented by CWA. The ESR in the functional title of Project Coordinator in the Customer Service Administration Unit interacts with MetroPlus employees in the Systems Analyst titles, represented by OSA, the Clerical Associate title, represented by DC 37, and the Assistant Coordinating Manager title, represented by CWA. She also interacts with Assistant Coordinating Managers and a HCPPA, represented by CWA, at HHC facilities. Within the Eligibility Unit, ESRs in the functional titles of Quality Assurance Coordinator, Eligibility Clerk, and Eligibility Supervisor give applications to and respond to questions from DC 37's Clerical Associates, who enter the data. Two ESRs in the functional titles of Eligibility Clerk

and Eligibility Supervisor have contact with a Senior HCPPA, represented by OSA, at Elmhurst Hospital Center. The ESR in the functional title of Member Services Supervisor has contact with a Clerical Associate at HRA. ESRs in the Eligibility Unit and the Provider Services Unit interact with a Supervising Systems Analyst, represented by OSA, in MetroPlus's Claims Department. In the Provider Services Unit, ESRs in the functional title of Credentialing Coordinator receive physicians' credentialing information from a Supervising Systems Analyst at Coney Island Hospital.

The wage rates of ESRs overlap with those of the titles represented by the Unions. ESRs earn between \$27,986, the starting salary for an ESR Assistant, and \$64,155, the maximum salary for an ESR Level III. Titles in OSA's bargaining unit earn between \$28,884, the starting salary for a Planning-Scheduling Analyst, and \$85,118, the maximum salary for a Senior HCPPA Level B. Titles in DC 37's bargaining unit earn between \$21,245, the starting salary for a Clerical Associate Level Ia, and \$45,136, the maximum salary for a Clerical Associate Level IVa. CWA's titles earn between \$31,950, the starting salary for a HCPPA, to \$62,842, the maximum salary for a PAA Level III. There is sufficient wage overlap to support a community of interest with titles in all three of the bargaining units.

When accretion to multiple bargaining units would be appropriate, the Board has stated that the purposes and policies of the NYCCBL are best served by ascertaining the employees' representation wishes in order to determine unit placement. *See Local 371, Soc. Serv. Employees Union, District Council 37, AFSCME*, Decision No. 1-2005 at 30-31; *Org. of Staff Analysts*, Decision No. 1-2000 at 17; *Civil Serv. Technical Guild*, Decision No. 27-80 at 19; *see also Communications Workers of America*, Decision No. 11-90 at 26 (ordering an election where any of the three proposed bargaining units would be appropriate).

Section 12-309(b)(2) of the NYCCBL authorizes the Board "to determine the majority

representative of the public employees in an appropriate collective bargaining unit by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of a majority of such employees [and] to certify the same as exclusive bargaining representative . . .” Accordingly, we direct that an election be conducted among employees in the ESR titles with OSA, DC 37, and CWA appearing on the ballot. The ESR titles will be added to the bargaining unit represented by the union that receives a majority of the valid ballots cast. If any of the Unions does not desire to participate in the election, it may decline to do so by making a request in writing to the Director of Representation, within ten days after service of this Decision and Direction of Election.

ORDER AND DIRECTION OF ELECTION

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 titles Enrollment Sales Representative Assistant (Title Code 98504B) and Enrollment Sales Representative Levels I, II, and III (Title Codes 98504C, 98504D, and 98504E) are eligible for collective bargaining; and it is further,

DIRECTED, that as part of the investigation authorized by the Board, an election by secret ballot be conducted under the Board's supervision, at a date, time, and place to be fixed by the Board, among the employees in the titles Enrollment Sales Representative Assistant and Enrollment Sales Representative Levels I, II, and III employed by the New York City Health and Hospitals Corporation to determine whether these employees wish to be represented by the Organization of Staff Analysts, District Council 37, AFSCME, or the Communications Workers of America for the purposes of collective bargaining and thereby be added to the bargaining unit represented by the Organization of Staff Analysts in Certification No. 3-88, the bargaining unit represented by District Council 37, AFSCME, in Certification No. 46C-75, or the bargaining unit represented by the Communications Workers of America in Certification No. 41-73. Employees in the titles Enrollment Sales Representative Assistant and Enrollment Sales Representative Levels I, II, and III employed during the payroll period immediately preceding this Decision and Direction of Election, other than those who have voluntarily quit, retired, or who have been discharged for cause before the date of the election, are eligible to vote; and it is further

DIRECTED, that if any of the Unions does not desire to participate in the election, it may decline to do so by making a request in writing to the Director of Representation within ten days after service of this Decision and Direction of Election; and it is further

DIRECTED, that within 14 days after service of this Decision and Direction of Election, the New York City Health and Hospitals Corporation will submit to the Director of Representation an accurate list of the names and addresses of all the employees in the titles Enrollment Sales Representative Assistant and Enrollment Sales Representative Levels I, II, and III who were employed during the payroll period immediately preceding the date of this Decision and Direction of Election.

Dated: June 22, 2006
New York, New York

MARLENE A. GOLD

CHAIR

GEORGE NICOLAU

MEMBER

CAROL A. WITTENBERG

MEMBER